(17)

No. 94-806-ATX
Status: GRANTED

Title: William Lawson, et al., Appellants
v.
Al Vera, et al.

Docketed:
November 2, 1994

Court: United States District Court for the Southern District of Texas

Vide:
94-805
94-988

Counsel for appellant: Morales,Dan

Counsel for appellee: Hurd,Paul Loy, Hicks,Renea, Solicitor General, Troy,Daniel E., Hair,Penda D.

See appdx in 94-805. N/A filed 9-30-94 & 10-3-94.
NOTE: Subsequent order entered 9-2-94 and amended 9-14-94.

Entry	Date	Note	Proceedings and Orders
1	Nov 2 1994	G	Statement as to jurisdiction filed.
2	Nov 30 1994		Motion of appellees Al Vera, et al. to affirm filed. VIDED.
4	Dec 7 1994		DISTRIBUTED. January 6, 1995 (Page 41)
5	Dec 15 1994	X	Reply brief of appellants filed. VIDED.
6	Jan 3 1995		REDISTRIBUTED. January 6, 1995
7	Jun 26 1995		REDISTRIBUTED. June 29, 1995 (Page 1)
8	Jun 29 1995		PROBABLE JURISDICTION NOTED.
			**********
10	Aug 8 1995		Order extending time to file brief of appellant on the merits until August 28, 1995.
11	Aug 14 1995		Joint appendix filed. VIDED.
12	Aug 28 1995		Brief of appellant George W. Bush, Govenor of Texas filed. VIDED.
13	Aug 28 1995		Brief of appellants William Lawson, et al. filed.
14	Aug 28 1995		Brief amici curiae of Democratic National Committee, et al. filed. VIDED.
15	Aug 28 1995		Brief of appellant United States filed. VIDED.
18	Aug 28 1995		Record filed.
		*	Original record proceedings United States District Court for the Southern District of Texas (4 BOXES)
17	Aug 31 1995		Order extending time to file brief of appellee on the merits until October 13, 1995.
21	Sep 4 1995		LODGING by appellants. Large copies of maps printed in Joint Appendix (10 copies).
19	Sep 12 1995	N	Motion of appellant the Solicitor General for divided argument filed.
23	Sep 12 1995	G	Motion of the Solicitor General and State and private appellants for divided argument filed.
20	Sep 13 1995	N	Motion of state appellants and private appellants for divided argument filed.
25	Oct 2 1995		Brief amicus curiae of A.J. Pate filed. VIDED.
22	Oct 3 1995		SET FOR ARGUMENT TUESDAY, DECEMBER 5, 1995. (1ST CASE).
26	Oct 6 1995		CIRCULATED.
24	Oct 10 1995		Motion of the Solicitor General and State and private appellants for divided argument GRANTED. in part as follows: State appellants - 20 minutes; private appellants - 10 minutes; Solicitor General - 10 minutes;

No. 94-806-ATX

Entry	Date	Note	Proceedings and Orders
			appellees - 40 minutes.
29	Oct 11 1995	X	Brief amici curiae of Pacific Legal Foundation, et al. filed. VIDED.
27	Oct 13 1995		Brief amici curiae of Washington Legal Foundation, et al. filed. VIDED.
28	Oct 13 1995	X	Brief of appellees Al Vera, et al. filed. VIDED.
30	Oct 13 1995		LODGING by appellees. 12 copies of article entitled "Minority Voting Rights Analysis for the Texas House of Representatives, 1991 Redistricting Plan."
31	Oct 13 1995	X	Brief amicus curiae of Institute for Justice filed. VIDED.
32	Nov 3 1995		Record filed.
		*	Original exhibits filed by Lawson, et al. in the U.S. District Court for the Southern District/Texas (BINDER)
33	Nov 13 1995		Record filed.
		*	Original State exhibits filed in the U.S. District Court for the Southern District of Texas (43 BOXES)
34	Nov 13 1995	X	Reply brief of appellants William Lawson, et al. filed.
35	Nov 13 1995	X	Reply brief of State Appellants filed. VIDED.
36	Nov 15 1995		Record filed.
		*	Original plaintiff's exhibits filed in the U.S.District Court for the Southern District of Texas (7 BOXES)
37	Nov 16 1995	X	Reply brief of appellant United States filed. VIDED.
38	Nov 17 1995		Record filed.
		*	Original LULAC exhibits filed in the United States District Court for the Southern District of Texas (BOX).
39	Nov 21 1995		Record filed.
		*	OVERSIZED MAPS filed in the United States District Court for the Southern District of Texas (BOX)
40	Dec 5 1995		ARGUED.

FILED

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No. 94-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

REV. WILLIAM LAWSON ET AL., APPELLANTS,

and

ROBERT REYES, ET AL., APPELLANTS

v.

AL VERA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

I. Where a State knows that it is possible to construct a reasonably compact minority opportunity district, within the meaning of *Thornburg v. Gingles*, and recognizes its obligation to avoid vote dilution, does *Shaw v. Reno* require the State to abandon all other districting goals and maximize regularity of shape of the voting rights district?

II. Where a State's majority-white congressional districts are highly irregular in shape, does *Shaw v. Reno* require the State to maximize regularity of shape only for its minority opportunity districts?

III. Are small, functional, rational, single-urban-area minority opportunity districts, that unite persons with a commonality of interest, unconstitutional under *Shaw v. Reno*?

IV. Did plaintiffs prove the elements of an Equal Protection claim with respect to Texas congressional District 18, 29 or 30?

V. Does *Shaw v. Reno* confer automatic standing on any State resident who idealizes colorblind districting?

PARTIES TO THE PROCEEDING

Plaintiffs are Al Vera, Edward Blum, Edward Chen, Pauline Orcutt, Barbara L. Thomas and Kenneth Powers.

Defendants are Texas State officials, Ann Richards, Governor, Bob Bullock, Lieutenant Governor, Pete Laney, Speaker of the House of Representatives, Dan Morales, Attorney General, and Ron Kirk, Secretary of State.

The Lawson Defendant-Intervenors are Rev. William Lawson, Zollie Scales, Jr., Rev. Jew Don Boney, Deloyd T. Parker, Dewan Perry, Rev. Caesar Clark, David Jones, Fred Hofheinz and Judy Zimmerman.

The LULAC Defendant-Intervenors are Robert Reyes, Angie Garcia, Robert Anguiano, Sr., Dalia Robles, Nicolas Dominguez, Oscar T. Garcia, Ramiro Gamboa and League of United Latin American Citizens (LULAC) of Texas.

The United States intervened as a defendant.

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REV. WILLIAM LAWSON ET AL., APPELLANTS,

and

ROBERT REYES, ET AL., APPELLANTS

v.

AL VERA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

JURISDICTIONAL STATEMENT

Appellants, Rev. William Lawson, Zollie Scales, Jr., Rev. Jew Don Boney, Deloyd T. Parker, Dewan Perry, Rev. Caesar Clark, David Jones, Fred Hofheinz and Judy Zimmerman (Lawson Intervenors) and appellants Robert Reyes, Angie Garcia, Robert Anguiano, Sr., Dalia Robles, Nicolas Dominguez, Oscar T. Garcia, Ramiro Gamboa and League of United Latin American Citizens (LULAC) of Texas (LULAC Intervenors), appeal from the injunction of

Texas' congressional districting plan entered by the United States District Court for the Southern District of Texas.

OPINION BELOW

The unreported opinion of the three-judge district court finding three districts unconstitutional, entered on August 17, 1994, is set out in the Appendix to the Jurisdictional Statement of the State Appellants (State App.) at 5a-84a.

JURISDICTION

On September 2, 1994, the district court entered an order requiring the State Legislature to develop a remedy plan by March 15, 1995. State App. 1a. On September 14, 1994, the court amended its September 2 order *nunc pro tunc*, to enjoin use of Texas' congressional districting plan for 1996 elections. *Id* at 30. The Lawson Intervenors and the LULAC Intervenors filed Notices of Appeal on October 3 and September 30, respectively. App. 1a, 4a. The Court has jurisdiction under 28 U.S.C. § 1253.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Equal Protection Clause of the Fourteenth Amendment provides that "[N]o State . . . shall deny to any person within its jurisdiction the equal protection of the laws." Sections 2 and 5 of the Voting Rights Act of 1965, 42 U.S.C. §§ 1973, 1973c, are set out in State App. 87a-88a.

STATEMENT

Proceedings Below

Plaintiffs filed suit on January 26, 1994, challenging under the Fourteenth Amendment at least 24 of Texas' 30 congressional districts. *See* State App. 9a & n.3. Plaintiffs claimed that Texas illegally used race in constructing congressional districts and failed to follow certain allegedly "traditional" districting principles. State App. 10a. The court granted motions of Rev. William Lawson, *et al.*, nine black and white voters in Districts 18 and 30 (Lawson Intervenors), the League of United Latin American Citizens (LULAC) of Texas and seven Hispanic voters (LULAC Intervenors) and the United States, to intervene as defendants. *Id.* at 11a.

The court below invalidated three districts, including Texas' only two African American opportunity districts (18 and 30) and one district (29) intended to provide Hispanic political opportunity. The court upheld the constitutionality of the other 21 challenged districts, of which 18 are majority white and 3 are majority Hispanic.

Incumbency Protection

More than a year prior to redistricting, the Texas congressional delegation began work with the "overriding objective" of "incumbency protection." State App. 23a. The court below noted: "The incumbents 'have practically drawn their own districts. Not practically, they have.'" *Id.* at 24a (quoting Senator Johnson, Chair, Subcommittee on Congressional Districts). The district court found: "[N]ever before have districts been drawn on a block-by-block or neighborhood- or town-splitting level to corral voters perceived as sympathetic to incumbents or to exclude opponents of incumbents." *Id.* at 55a. The court graphically described the result:

> [M]any incumbent protection boundaries sabotaged traditional redistricting principles as they routinely divided counties, cities, neighborhoods, and regions. . . . Congressmen or would-be Congressmen shed hostile groups and potential opponents by fencing them out of their districts. ... The Legislature obligingly carved out districts of apparent supporters of incumbents, as suggested by the incumbents, and then added appendages to connect their residences to those districts.

Id. at 55a-56a (footnotes and citations omitted).[1]

As found by the district court, many Texas congressional districts were "disfigured less to favor or disadvantage one race or ethnic group than to promote the reelection of incumbents." State App. 9a (footnote omitted). Pictured on the following page are two examples of irregularly shaped, majority-white districts. District 6 rambles over 5 counties, PX 34P, includes urban, suburban and rural territory, and makes a jagged incursion into Ellis County to pick up the residence of incumbent Joe Barton. Its longest axis is 82 miles, almost twice that of Districts 18, 29 and 30. U.S. Ex. 1067. District 6 interweaves with

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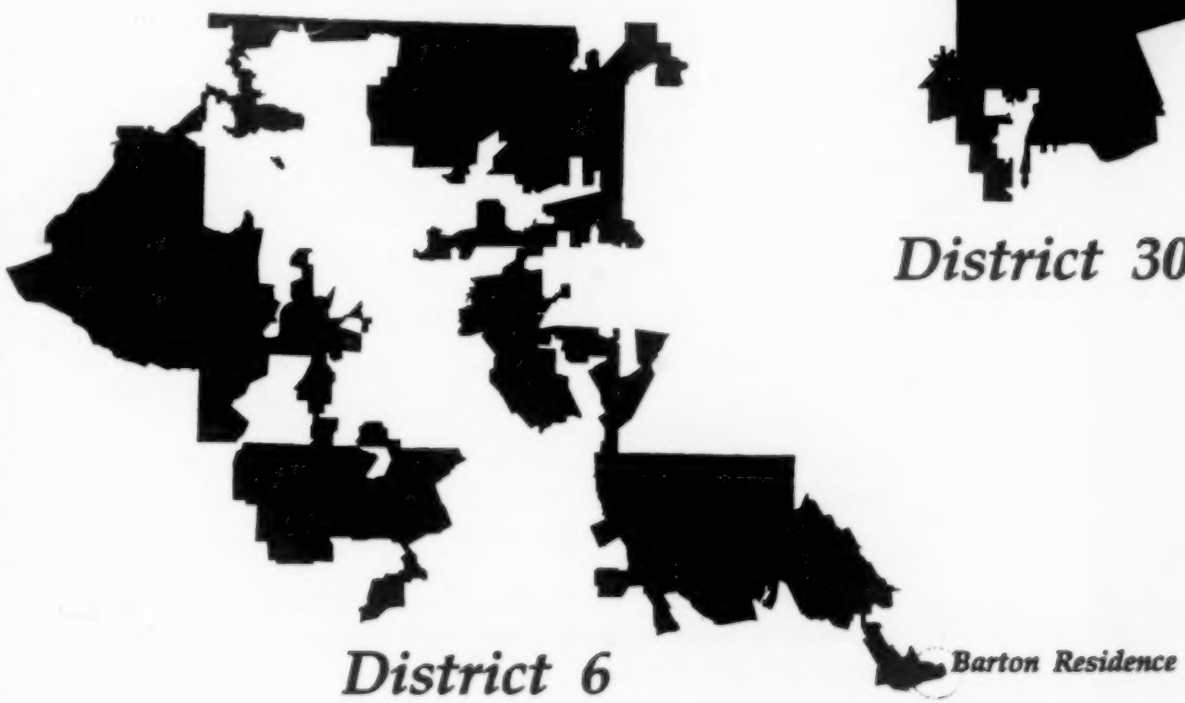
[1]Drawing districts to promote election of incumbents and aspiring State Legislators is a strong Texas tradition. *See, e.g., White v. Weiser*, 412 U.S. 783, 792 (1973) (describing incumbency protection in 1970's). Regular shapes and respect for political subdivisions have a weak history, at best, as districting goals. *See* State App. 15a, n.9. Although the court below thought that prior plans were more compact than the 1991 plan, there is no evidence of a previous legislative *goal* of compact districts, as opposed to lack of the technological capacity available in 1991. Many legislators stated without contradiction that compactness has never been a strong State interest in congressional districting. *E.g.* Lawson Ex. 14 ¶ 17 (State Senator Ted Lyon); State Ex. 23 (Justice (former State Senator) Oscar Mauzy).

47 Percent African American
Democrat Eddie Bernice Johnson

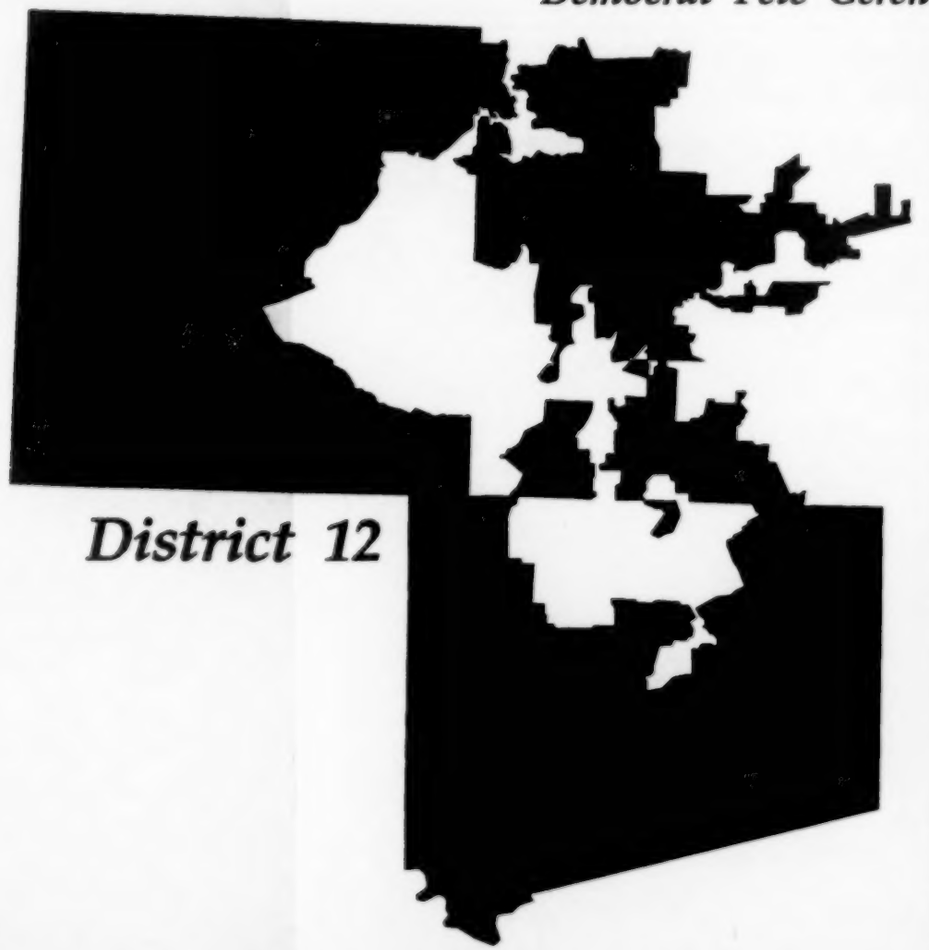
District 30

89 Percent White
Republican Joe Barton



District 6

87 Percent White
Democrat Pete Geren



District 12

COMPARISON OF SELECTED TEXAS CONGRESSIONAL DISTRICTS
(NOT DRAWN TO SCALE) PLAN ID: PUBLC657

DAN MORALES
ATTORNEY GENERAL

District 12, at one point using a narrow corridor to pass into territory almost totally surrounded by District 12. District 12 includes parts of three counties, PX 34P, and is 84 miles long, U.S. Ex. 1067. For comparison, the invalidated District 30 is also set out.[2]

Voting Rights Act Considerations

The Legislature was aware as it redistricted that the African American population in both Harris County (Houston), where District 18 had been represented by an African American since Barbara Jordan, and in Dallas County, was "sufficiently large and geographically compact"[3] to constitute an effective majority in a single-member district.[4] In Harris County, the Hispanic population had experienced phenomenal growth and numbered enough to constitute the majority in *two* congressional districts. A highly-publicized plan creating a new majority-Hispanic district in Harris County, while preserving District 18 as an African American opportunity district, was proposed by State Representative Roman Martinez on March 23, 1991.[5]

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[2]The pictures are not to scale, thus obscuring the larger size of Districts 6 and 12.

[3]*Thornburg v. Gingles*, 478 U.S. 30, 50 (1986). *See also Johnson v. De Grandy*, 129 L.Ed.2d. 775, 788-790 (1994); *Voinovich v. Quilter*, 113 S.Ct. 1149 (1993); *Growe v. Emison*, 113 S.Ct. 1075 (1993).

[4]Plaintiffs' only expert witness testified that "reasonably compact," effective African American opportunity districts could be drawn in the Dallas and Houston areas. TR III:113-115. *See also* State App. 70a-71a; State Exs. 12A, 12B, 12C.

[5]LULAC Ex. 6; Martinez Dep. I:27, 52. Virtually all of the witness statements and documentary evidence introduced by the State and the Intervenors was uncontested by plaintiffs and accepted as accurate by the court below. *But see* State App. 47a, n.36.

The Legislature was well aware of numerous court decisions finding high levels of racially polarized voting across the State.[6] The Legislature also knew that section 5 of the Voting Rights Act prohibited retrogression of District 18.

In the Dallas area, the Legislature knew that the large, geographically compact and politically cohesive African American community had been fragmented between the districts of two white incumbents in the districting plan used in the 1980's.[7] Also before the Legislature was the federal District Court's decision in *Williams v. City of Dallas*, 734 F. Supp. 1317, 1393 (N.D. Tex. 1990), issued on March 28, 1990, just as the redistricting process began. *Williams* concluded: "[I]t is clear that there is white bloc voting in Dallas which usually defeats the preferred choice of African-Americans."[8] *Williams* also found extensive evidence of virtually all of the other factors listed in the Senate Report as relevant to the "totality of the circumstances" analysis under Section 2,[9] including common use of racial appeals in

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[6]*E.g.*, U.S. Ex. 1065; State Ex. 17 at 7-24; State Ex. 15, at 6, 7. The Legislature's knowledge that voting is highly racially polarized was scientifically confirmed by experts at trial. State App. 22a-23a.

[7]*E.g.* Lawson Ex. 15 ¶ 10.

[8]For example, in 1983, African American community leaders chose a highly qualified candidate who still could not raise money from whites. *Id.* at 1361. The African American candidate was soundly defeated by the white candidate in a runoff, obtaining almost all of the black vote but only 11 percent of the white vote. *Id.* at 1324.

[9]S. Rep. No. 97-417 (1982), at 28-29. The egregious history of racial discrimination in Dallas politics is set out in the Senate Report. *Id.* at 21-22.

campaigns,[10] lack of success of minority candidates, a history of discrimination, socioeconomic disadvantages affecting political participation[11] and an atmosphere of racial polarization.[12] In 1988, just three years before the new congressional districts were drawn, the "city split across racial lines," *id.* at 1364.

Construction of the Invalidated Districts

Fortunately for Voting Rights Act compliance, Texas in 1991 received three new districts in which there was no incumbent. Based on extensive factual evidence, merely summarized above, the Legislature decided to maintain District 18 as an African American opportunity district, to place a new Hispanic opportunity district in Harris County (29), and to place another new district (30) in the Dallas metroplex as an African American opportunity district.

Protecting incumbents while inserting new voting rights districts into the incumbents' territory was not easy. In Dallas, Senator Johnson proposed a much more compact African American opportunity district, which "drew much

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[10]"[I]n the 1986 general election, John Vance -- the successful candidate for Dallas County District Attorney -- ran a newspaper ad with his picture next to the picture of his black opponent." 734 F. Supp. at 1363. *See also id.* at 1348 (Mayor ran on anti-busing platform, using racially derogatory campaign materials), 1360 (newspaper identified white candidate as "civil leader" and opponent as "black activist").

[11]734 F. Supp. at 1382, 1403.

[12]For example, statements were made in 1981-1982 City Council meetings that Oak Cliff "had to have a white representative on the Council because 'Anglos felt extremely uncomfortable being represented by blacks'" and if Oak Cliff "did not have an Anglo member on the City Council, there would be 'white flight' and 'Oak Cliff would be black within two years.'" 734 F. Supp. at 1323.

opposition from incumbents and was quickly abandoned." State App. 31a. *See also id.* at 49a. Two powerful, white, Democrat incumbents in Dallas (Martin Frost in District 24 and John Bryant in District 5) had established ties to territory and voters, including African Americans who in the 1980's had been fragmented between their districts. A carefully-crafted compromise was forged in which Frost's and Bryant's districts were each pulled back and the new district was squeezed in between them.[13]

Because Frost and Bryant retained territory that would have been in the most regularly shaped version of District 30, the District was not configured to maximize regularity of shape. To replace population taken by incumbents, then-State Senator Eddie Bernice Johnson, who intended to seek election from District 30, wanted to include *voters of all races* from her political base, the City of Grand Prairie. Congressman Frost, who also had a base in Grand Prairie, engaged in a vicious battle with Johnson over that City, which they ultimately split in a compromise. State App. 32a. Significantly, this battle was over *white*, and not African American, voters. The portion of Grand Prairie included in District 30 is only 14% African American. PX 34T.

One of the most irregular parts of District 30, to the northwest, does not pick up population, but goes out to DFW Airport, State App. 27a, which was included in the District for non-racial reasons. U.S. Exs. 1070, at 4-5, 1074, 1075. The main northern portion of District 30 would not exist if incumbents Frost and Bryant had not taken population out of District 30 on the other sides. In pushing

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[13]State App. 32a, n.23 ("Frost and Bryant split Dallas County and we were forcing another district right down in-between the two of them and pushing them outward.")(quoting staff member of Senate Subcommittee on Legislative Redistricting).

north, District 30 ran into Park Cities, a highly Republican community, whose Republican incumbent had strongly requested to keep this area.[14] Complying with this incumbent desire caused a huge incursion by District 3 into the middle of District 30. Another major goal was to comply with the request of Jewish voters to be in District 30. Lawson Ex. 22. Significant industry, located on the Central Expressway corridor in the north, was important to give political clout to the district. A final goal was to include two small African American communities, one in Hamilton Park and the other in Plano, each of which desired to be in District 30. E.B. Johnson Dep. 133-138.

Many factors influenced the boundaries of the districts in the Houston/Harris County area. As found by the district court, Congressman Mike Andrews' District 25 "was to be kept intact and Democratic." State App. at 38a. "[A] suggestion by Congressman Craig Washington that District 18 be reconfigured based on the shape of African-American majority Senate District 13 was unacceptable 'because it would have taken a large chunk out of District 25.'" *Id.* at 38a.

State Representative Roman Martinez proposed a plan in which the new Hispanic district would overlap substantially with his House District.[15] State App. 36a-37a. Significantly, Rep. Martinez' plan did not split any precincts, State App. 39a, and has never been characterized as non-

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[14]E. B. Johnson Dep. 130.

[15]All agreed that African American and Hispanic voters are not cohesive and therefore that each minority group had to be treated separately for purposes of Voting Rights Act compliance. *See* State App. 21a-22a.

compact or unduly irregular.[16] The more regularly shaped version of District 29 proposed by Rep. Martinez was rejected because then-State Senator Gene Green, who is white, wanted District 29 to overlap as much as possible with his Senate District. The court below found that "the borders of district 29 became increasingly distended as [Rep. Martinez] and Senator Green fought to place their state constituents within the new district." State App. 66a. *See also id.* at 38a-39a.

Description of the Invalidated Districts

Districts 18, 29 and 30 are racially integrated. The only plaintiff from the Dallas area, Pauline Orcutt, testified forcefully about District 30: "*It is integrated. Of course it is, and you know it.*" Orcutt Dep. 110-111 (emphasis added).[17] Dallas businessman Albert Black stated: "I grew up in a segregated neighborhood . . . . I do not understand how anyone could think a district that brings together an African-American businessman from South Dallas (like me) and an Anglo businessman from North Dallas (like Jerry Johnson) to further economic development in the entire Dallas area could be considered segregative." Lawson Ex. 1 at 16.[18]

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[16]Rep. Martinez' plan also preserved the Democratic nature of District 25, thus protecting white incumbent Mike Andrews. State App. 38a.

[17]Districts 18 and 29 also are integrated, according to plaintiffs. TR I:25 (Ed Blum); Thomas Dep. 71-72.

[18]*See also* Lawson Ex. 5 ¶¶ 2-3 (Councilwoman Sandra Crenshaw) ("I think it is ridiculous to say that this District segregates voters. . . . [D]istrict lines are invisible things in the world. . . . Dallas is extremely segregated. My neighborhood is 100 percent African American. . . . The segregation of people . . . in Dallas was present before the current congressional district lines . . . were drawn. Redlining, lack of fair housing, lack of economic development, (continued...)

Houston. District 18 was constructed in 1971[19] with the expectation, realized shortly thereafter, that then-State Senator Barbara Jordan would become its congressional representative. U.S. Ex. 1071, at 10.[20] "[F]undamentally, the 18th district has not changed much over the last 20 years." Lawson Ex. 16 ¶ 7. In voting age population (VAP), it is 49% African American. District 29, 55% Hispanic VAP, is the poorest district in the State, in which "there is definitely a community of interest." Martinez Dep. I:73. Districts 18 and 29 are located entirely within a single county. No point in District 18 is further than 39 miles from any other point, while District 29's longest axis is only 43 miles. U.S. Ex. 1067. Both districts provide for ease of transportation and communication among their residents. *Id.*[21]

Dr. Paul Geisel, an expert demographer, analyzed Districts 18 and 29 as follows:

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[18](...continued)
exclusion from the political process, and other forms of discrimination cause segregation -- not lines on a map.").

[19]District 18's traditions extend not just to African Americans, but to the long-included, majority-Anglo areas that are an integral part of the District, such as the Montrose neighborhood in downtown Houston. *E.g.* Lawson Ex. 15 ¶ 19. Voters of all races in District 18 are satisfied with its composition. *E.g.*, Lawson Ex. 10 ¶ 10 (white resident).

[20]Race was considered in the creation of District 18 in 1971, yet the district was never challenged and plaintiff Chen believed it was constitutional then. TR I:33.

[21]The perimeters of Districts 18 and 29 are only 540 and 539 miles respectively, roughly in the middle of Texas congressional districts. U.S. Ex. 1067. Eleven Texas congressional districts have boundaries of more than 900 miles, with District 23 measuring 2035 miles in total perimeter. *Id.* The State average is 750 miles. *Id.*

> Both of these districts are essentially in the city of Houston and represent historic political wards of the city. . . . In total physical size districts 18 and 29 are small as congressional districts. It is possible to visit all parts of either district in any direction in less than 1 hour. The media and other communication accesses to these districts is similar.

State Ex. 18, Pt. 3 at 8. Dr. Richard Murray, a well-respected,[22] local political scientist, reported about Districts 18 and 29: "Stable neighborhoods and communities of interest were generally respected. . . . Stable innercity neighborhoods -- River Oaks, south Montrose, the East End, Third Ward, Acres Home -- were not divided." Lawson Ex. 26, at 17.[23] Controlling for race within Districts 18 and 29, Dr. Murray found: "The congressional district plan adopted by the Texas Legislature created districts in Harris County [that] bring together people, including minorities not well represented in the legislative chambers even in the 1990's, who share a number of demographic and political behavioral characteristics." *Id.* at 25. Dr. Murray concluded that "the arguments for maximizing compactness" are "weak" in Harris County. *Id.* at 26.

Dallas. District 30 also is located in a single metropolitan area, with no point more than 42 miles from any other point, U.S. Ex. 1067.[24] The residents of District

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[22]Plaintiffs' only expert witness, testified: "I know Professor Murray very well, and I respect him." TR V:75.

[23]*See also* Lawson Ex. 15 ¶¶ 11-12; Lawson Ex. 18 ¶ 8.

[24]District 30's perimeter is 433 miles. U.S. Ex. 1067.

30 all live and work[25] within a short distance of each other, and the district rationally ties together persons with a community of interest. Demographer Paul Geisel described District 30 as follows: "Urban congressional districts, because of the population densities, can physically appear rather odd. . . . The truth . . . is that District 30 is quite compact. It represents a constituency that has a genuine focus not only for black citizens but for the region as a whole." State Ex. 18, Pt. 2 at 7-8.[26] *See also* TR IV:136-161.

The residents of District 30 share a common public transportation system (DART). The Senate Redistricting Committee used voting patterns on DART referenda in constructing District 30, including persons of all races who had voted in supported of DART and thus demonstrated a community of interest with each other. State App. 34a; E. B. Johnson Dep. 85-86. DART's system map bears an undeniable correspondence to the map of District 30.[27]

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[25]Even members of District 30 who live the farthest from the District's core travel to the downtown area to work, to go to church and to socialize. Johnson Dep. 134.

[26]The court below found that Dr. Geisel's Report, as well as that of Dr. Waddell, "accurately describe[s] the district." State App. 35a.

[27]*See* Lawson Ex. 17. The DART light rail system does not go into the affluent Park Cities area excluded from District 30. DART board member and former House member, Jesse Oliver, stated: "[T]he Dart light rail system appears to be the skeleton of District 30." Lawson Ex. 17 ¶ 10. "Without a doubt, the drawing of District 30 brought together, into one district, the voters most affected by DART's light rail project." *Id.* at ¶ 13. "The light rail starter system was designed to serve transit-dependent people; and those people are usually low to moderate income workers, who most often are minorities. District 30 includes this same community of people." *Id.* at ¶ 11.

Opinion Below

The court below invalidated districts 18, 29 and 30, while specifically upholding the constitutionality of 18 majority-white and 3 majority-Hispanic districts. The court subjected districts 18, 29 and 30 to strict scrutiny because of two factors: 1) the State admittedly took race into account in an effort to comply with the Voting Rights Act; and 2) the districts did not comply with the court's definition of "traditional" districting criteria. State App. 69a. Exalting the benefits of "geography and effective representative government," the judges opined that *their* definition of tradition (regular shapes and respect for political subdivisions) would promote the "bedrock principle of self-government," State App. 56a, 57a n.43. The judges sharply criticized the State for adopting a different vision of democratic self-government -- one which protected incumbents of both parties because of the benefits their seniority and experience conferred on the whole State. "[I]ncumbent gerrymandering" offended the court's civic "ideals," and moved it to accuse the Legislature of a "pernicious tendency" toward "undermin[ing]" "the interdependency of representatives and their constituents." *Id.* at 56a-57a & n.43.

Concluding that "[t]his form of incumbent protection is much different in degree from the generalized, and legitimate, goal of incumbent and seniority protection previously recognized by the Supreme Court," *id.* at 551,[28] the district court rejected incumbency protection as an explanation for the shapes of Districts 18, 29 and 30. The court reasoned that "*Shaw* nowhere refers to incumbent protection as a traditional districting criterion," State App.

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[28]*See* State App. 55a (distinguishing *White v. Weiser*, 412 U.S. 783, 791 (1973), and *Gaffney v. Cummings* 412 U.S. 735, 753 n.18 (1973)).

at 56a,[29] and found that "racial gerrymandering was an essential part of incumbency protection," State App. 65a, because minorities were intentionally placed in the districts of white Democrats. The court did not find the white Democrats' districts unconstitutional, however. The result of the ruling below is that the race-conscious construction of an irregularly shaped district is permissible to help white incumbents, but if that construction of the majority-white district causes a neighboring minority opportunity district to have an irregular shape, the minority district is unconstitutional.

Applying strict scrutiny, the court did not deny that the State had a compelling justification for creating minority opportunity districts in the areas of the State where Districts 18, 29 and 30 lie.[30] Rather, the court's problem was with the particular configuration chosen by the Legislature for these districts. The court ruled that narrow tailoring requires "the least possible amount of irregularity in shape." *Id.* at 72a. Since the State had gone to great effort to prove that it rejected regularly shaped versions of these districts in order to achieve other State goals, the court easily concluded that the districts did not meet its definition of narrowly tailored. *Id.* at 73a.[31]

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[29]In contrast, *Johnson v. Miller*, No. 194-008 (S.D. Ga. Sept. 12, 1994), holds that a "nonexclusive list" of "traditional districting principles" includes "protecting incumbents." Slip op. at 30.

[30]The court found it unnecessary to explore the compelling interest issue, finding narrow tailoring dispositive.

[31]There is no suggestion that these districts did not meet the other elements of narrow tailoring. They are not packed with minority voters and Texas did not create more voting rights districts than necessary. *See Johnson v. Miller*, slip op. at 67.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The Court should note probable jurisdiction to resolve several important questions concerning the meaning of *Shaw v. Reno*, 125 L.Ed. 2d 511 (1993). Full briefing and argument on this case is important because it involves facts and issues not presented in other pending appeals.

An important element of the claim under *Shaw v. Reno* is a district "so bizarre on its face that it is 'unexplainable on grounds other than race.'" 125 L.Ed.2d at 527. This case presents the question whether minority opportunity districts shaped consistently with many majority-white districts in the same State plan are actionable at all under *Shaw*. Because the minority opportunity districts invalidated by the court below are not "bizarre" or "unusually shaped" in comparison to other Texas districts, the court below should not have reached strict scrutiny. And, imposing higher shape requirements only on minority opportunity districts discriminates against minority voters and minority incumbents.

This case also raises the unique question whether, where the ability to draw reasonably compact minority opportunity districts is conceded, *Shaw v. Reno* overrides federalism and deprives the State of the ability to pursue its own districting goals simultaneously with Voting Rights Act compliance. Unlike all other post-*Shaw v. Reno* appeals, this case does not concern whether there will be three minority opportunity districts in the areas of the State now served by Districts 18, 29 and 30; all parties agree that such districts are necessary and the lower court did not indicate otherwise. The issue presented here concerns the surrounding, majority-white districts. If the minority opportunity districts are required to be pretty, the majority-white, neighboring districts will either sacrifice incumbents or become more ugly than they already are, to pull together enough like-minded voters to save the incumbents. The court below required the

State's minority opportunity districts to conform to districting principles not constitutionally required for majority-white districts and not valued by Texas. The Court has generally rejected, as infringing on the States' political function, arguments for constitutionalizing certain federally-idealized districting principles, and there is no immediately apparent logic for applying a different rule *only* to minority opportunity districts.

This case is particularly appropriate for review by this Court. In this case, small, functional, rational, single-urban-area districts have been invalidated. The court below extended *Shaw* to prohibit joining in one district persons who live *in the same city*. The lower courts are divided on whether shape or functionality governs the analysis of voting districts.

This case also presents a clear, undisputed record of plaintiffs' failure to prove any of the substantive elements of a *Shaw* claim. Finally, the case raises the unresolved question whether plaintiffs whose only harm is to their idealized vision of a "colorblind" districting process have standing to challenge a state's districting plan.

I. THE COURT BELOW ERRED IN HOLDING THAT MINORITY OPPORTUNITY DISTRICTS MUST MAXIMIZE "REGULARITY" OF SHAPE, IGNORING ALL OTHER STATE DISTRICTING GOALS

Had the State not drawn districts to give recognition to the voting strength of the large and geographically compact African American and Hispanic populations in Houston and Dallas, plaintiffs suing under section 2 of the Voting Rights Act would have been able to present conclusive proof of hypothetical liability districts that meet the *Gingles* compactness threshold. Thus, this case squarely

presents the unique[32] question whether a State which knows compactness exists and recognizes its obligation not to dilute minority voting strength must abandon all other districting goals in order to maximize regularity of shape of the voting rights districts.

The court below mandated that all minority opportunity districts "have *the least possible* amount of irregularity in shape, making allowances for traditional districting criteria."[33] State App. 72a. Thus, race must be the *exclusive* determinant of the district. This holding conflicts directly with *Johnson v. Miller*, which ruled that where race is only one of several influences, the district is not subject to strict scrutiny. Slip op. at 37, 40-41. The decision below converts *Shaw v. Reno* from a claim concerning districts shaped by race, to a constitutional prohibition on *non-racial* influences on the shape of minority opportunity districts.[34]

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[32]This question is not presented in any pending appeal. In addressing Louisiana District 4 and Georgia District 11, federal courts ruled that the African American population was so dispersed that it was *impossible* to draw a district with an effective African American majority that would meet the *Gingles* compactness threshold. *Hays v. Louisiana*, No. 92-1522 (W.D. La. July 29, 1994), slip op. at 5 n.4; *Johnson v. Miller*, slip op. at 85. Whatever the merits of those courts' definitions of compactness, which are being challenged on appeal, neither case presents the question whether the state is free to reject the most compact version of a remedial district in favor of an irregularly shaped version that better serves other state goals.

[33]The court defined "traditional" criteria narrowly as a matter of law, without regard for the State's actual traditions. State App. 56a.

[34]The lower court rejected incumbency protection as a non-racial explanation for the shapes of minority opportunity districts because *Shaw* does not explicitly mention incumbency protection and because protecting white incumbents was found to involve the use of race.

(continued...)

Under *Shaw v. Reno*, a necessary threshold for strict scrutiny is a district shape "on its face . . . 'unexplainable on grounds other than race.'" 125 L.Ed 2d at 527 (citation omitted). Where regularly shaped, compact versions of minority districts are possible, the State's choice to recognize minority voting strength in a less regularly shaped manner cannot be attributed to a racial motive or to a desire to segregate on the basis of race. Both the regular and the irregular district equally meet the State's goal of complying with the Voting Rights Act; the irregular version meets several other State goals, concerning, for example, incumbents, constituent desires, businesses and airports. Where a regularly shaped version of a voting rights district is rejected for reasons such as these, the analysis should never reach strict scrutiny.

The district court's interpretation of narrow tailoring conflicts with the decisions of the Southern District of Georgia and the Eastern District of North Carolina. *Johnson v. Miller* reasoned that incorporating notions of compactness, contiguity or respect for political subdivisions into the definition of narrow tailoring would

> elevate to constitutional status that which was intended only as a barometer for determining whether a district adequately serves its constituents. Observance of those traditional principles is also difficult to judge at the exacting level required for a narrow tailoring determination, and such judging would force the judiciary to meddle with legislative prerogatives to an undesirable degree.

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[34](...continued)
State App. 65a. Thus, the minority districts were held unconstitutional because of the influence on their shapes of a *constitutional* use of race in the white districts. This result does not appear to have been contemplated by the Court in *Shaw v. Reno*.

Slip op. at 19 n.40. *See also Shaw v. Hunt*, No. 92-202-CIV-5-BR (E.D. N.C. Aug. 1, 1994), slip op. at 95. The court below commented: "Regarding this aspect of narrow tailoring, we ... register disagreement with the two-judge majority that decided *Shaw* on remand." State App. 72a n.55.

The extension of *Shaw v. Reno* to require that all minority opportunity districts maximize regularity of shape has troubling implications. It gives district shape exclusive influence, exalting judges' aesthetic and civic ideals over the careful balancing of the State's interests, performed by elected representatives. This seriously undermines the principle of federalism. Redistricting is "fundamentally a political affair," *Davis v. Bandemer*, 478 U.S. 109, 145 (1986) (O'Connor, J., concurring), on which the federal judiciary should "follow the policies and preferences of the State, as expressed . . . by the State legislature," *White v. Weiser*, 412 U.S. 788, 795 (1973).[35]

The lower court's conclusion also means that a State has less flexibility when it acts *voluntarily* than when it waits to be sued under section 2. After finding a violation, the federal court must give the State an opportunity to devise a remedy according to the legislature's definition of "important state interests," which may include protecting incumbents, *White v. Weiser*, 412 U.S. at 796. *See Growe*, 113 S.Ct. at 1081 (voluntary compliance encouraged); *Chapman v. Meier*, 420 U.S. 1, 27 (1975).

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[35]The Court recently emphasized that "[r]eapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court." *Growe v. Emison*, 113 S.Ct. at 1081 (internal quotations omitted). *See also Voinovich v. Quilter*, 113 S.Ct. at 1157; *Reynolds v. Sims*, 377 U.S. 583, 586 (1964).

Even more troubling is that by imposing a special regular-shape maximization requirement *only* on minority opportunity districts, the court below mandates that the State discriminate *against* racial minorities, compared to other groups seeking recognition of their voting strength. Redistricting involves "competing claims of political, religious, ethnic, *racial*, occupational, and socioeconomic groups." *Bandemer*, 478 U.S. at 147 (O'Connor, J., concurring) (emphasis added). Under the rule established by the court below, a state may, without federal court interference, construct *irregular* districts to recognize the voting strength of any group that is not a historically disadvantaged racial minority -- even on the basis of normally suspect classifications, such as partisan affiliation[36] or religion. Yet, racial minorities must convince the State to forsake all other districting goals and to maximize the regular shape of minority opportunity districts.[37] This

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[36]*See Bandemer*, 478 U.S. at 143 (plurality opinion) (partisan vote dilution occurs only when electoral system consistently degrades voters' influence on system as a whole).

[37]The ruling below also requires the State to discriminate against minority incumbents and would-be incumbents. Craig Washington, an African American incumbent in 1991, was treated like all other, mostly white incumbents, when the Legislature created a district from which he could be re-elected. Because racially polarized voting is a fact of life in Texas, race had to be taken into account in constructing District 18, just as Republican districts had to be majority white. To achieve other important state interests, Washington's district became irregular, just as the districts of white incumbents in Harris County. By singling out one incumbent on the basis of race and forcing the State to treat him less favorably than all other incumbents, the district court requires unconstitutional racial discrimination against the State's only African American incumbent.

Similarly, although Districts 29 and 30 had no incumbent, two State Senators, one white and one African American, were treated as

(continued...)

heaps an additional, overwhelming disadvantage on racial minority groups which already suffer tremendous obstacles in the political process -- obstacles which the Equal Protection Clause and the Voting Rights Act were intended to ameliorate, not intensify.[38]

II. THE COURT BELOW ERRED IN IGNORING THE HIGHLY IRREGULAR SHAPES OF TEXAS' MAJORITY-WHITE DISTRICTS

This case raises the important, unresolved question whether the highly irregular shape of virtually all of a state's congressional districts should be considered in evaluating minority opportunity districts. The court below found three minority opportunity districts unconstitutional, while specifically upholding the constitutionality of 18 irregularly shaped, majority-white districts. As found by the lower court, many Texas majority-white districts are "disfigured" and "equally 'untraditional.'" State App. 9a, 65a. Yet, the court subjected only minority opportunity districts to strict scrutiny.

Under *Shaw v. Reno*, "bizarreness," and whether it is explainable on non-racial grounds, has become a doctrinal standard of profound constitutional significance, implicating whether strict scrutiny is applied to a congressional district. Yet, the term "bizarre" has no generally-accepted definition

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[37](...continued)
functional incumbents in the Texas tradition. The court below erred in ruling that *Shaw v. Reno* requires the State to treat these aspirants differently than other incumbents, based on their race, or that of their constituents.

[38]"Singling out the political processes affecting racial issues for uniquely disadvantageous treatment" violates Equal Protection. *Washington v. Seattle School District No. 1*, 458 U.S. 457, 486 n.30 (1982).

in practice or political science literature.[39] In rating the "bizarreness" of districts, one of the plaintiffs in this case explained: "There is no right or wrong on that. That's personal judgment." TR I:41. The court below used the "eyeball"[40] test to find Districts 18, 29 and 30 "bizarre," looking at these districts in isolation from the rest of the State's plan. Clarification of the substantive content of the "bizarreness" doctrine is essential to provide for uniformity of application and to avoid the imposition of widely-divergent, subjective "personal judgment[s]" and "eyeball" tests by plaintiffs and federal courts.

In failing to consider the shapes of other Texas congressional districts, the court below diverged substantially from *Shaw v. Reno*. *Shaw* indicates that the "bizarreness" of a challenged district must be apparent "on its face." 125 L.Ed.2d at 525, 526, 527, 528, 530, 532, 536. The purpose of the bizarreness doctrine is not to impose a fixed, federally-mandated artistic ideal for district shape, but rather to ferret out "unusually-shaped"[41] districts. Where *all* of the State's districts are irregularly shaped, there is nothing "unusual" or "dramatic" about such a shape in a minority opportunity district. Moreover, a facial, non-racial explanation for the irregular shape of the minority districts is obvious -- they are shaped just like the rest of the State's districts.

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[39]Similarly, as recently explained by the court in *Johnson v. Miller*: "there is no litmus test for compactness; it has been described as 'such a hazy and ill-defined concept that it seems impossible to apply it in any rigorous sense in matters of law.'" Slip op. at 80. *See also Shaw v. Hunt*, slip op. at 90-92 (no judicially manageable standard of compactness).

[40]*E.g.* State App. 46a.

[41]*Shaw*, 125 L.Ed.2d at 521. *See also id.* at 529 ("dramatically irregular shapes").

If the court below had correctly applied the bizarreness doctrine, districts 18, 29 and 30 would not have been subjected to strict scrutiny. The irregular shape of many majority-white congressional districts is beyond dispute. The plaintiffs identified 23 of Texas' current congressional districts as equally or more bizarre than districts 18, 29 or 30.[42] Only four of Texas' 30 districts did not appear on a plaintiff's list as at least equally bizarre to district 18, 29 or 30. On these facts, it is illogical to conclude that the shape of a minority opportunity district "on its face" establishes a racial basis, while the equally irregular shapes of other districts do not.

III. THE COURT BELOW ERRED IN IGNORING THE SIZE, FUNCTIONALITY AND RATIONALITY OF DISTRICTS 18, 29 AND 30

This case also presents the important question left unresolved in *Shaw v. Reno* concerning whether small, urban, functional congressional districts are "bizarre" and unexplainable on grounds other than race. In *Shaw v. Reno*, the Court emphasized that one of the districts before it spanned 160 miles, ten counties and several urban areas. Unlike the districts at issue in *Shaw*, Districts 18, 29 and 30 are each in a single media market and served by a single transportation system. District 30 rationally joins together persons who have a common interest in the DART transportation system. The Court should note probable jurisdiction to decide whether the functionality[43] and

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[42]Thomas Dep. 49-52; Vera Dep. 36-44; Blum Dep. 65-73; Chen Dep. 65-77; Powers Dep. 55-58.

[43]*See De Witt v. Wilson*, 1994 WL 325415, pp. 5-6 (E.D. Calif. June 27, 1994) ("[c]ompactness does not refer to geometric shapes but to the ability of citizens to relate to each other and their representatives and to the ability of representatives to relate effectively to their

(continued...)

rationality of urban districts should be considered in assessing their constitutionality.

IV. THE COURT BELOW ERRED IN HOLDING THAT PLAINTIFFS PROVED AN EQUAL PROTECTION VIOLATION

Although *Shaw v. Reno* has primarily been viewed as a ruling about the shape of congressional districts, the decision also sets out the substantive elements of this type of claim. Under *Shaw,* the substantive elements a plaintiff must prove are:

1. the district includes individuals who belong to the same race, but who are otherwise widely separated;

2. the district is segregated;

3. the district reinforces stereotypes that members of a racial group will prefer the same candidates at the polls;

4. the district exacerbates racially polarized voting; and

5. the district results in elected officials who do not represent their constituency as a whole.

125 L. Ed. 2d at 525, 529-530. In the instant case, plaintiffs proved none of these substantive elements of a "racial gerrymander." Although it was not their burden, defendants and intervenors *disproved* each of these elements. The

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[43](...continued)
constituency"); *Johnson v. Miller*, slip op. 83, n.43 (prefers "functional" approach to compactness); *Shaw v. Hunt*, slip op. 132-138.

Court should note probable jurisdiction to clarify that an Equal Protection claim under *Shaw v. Reno* is not simply about artistic ideals of shape, but includes important substantive elements on which plaintiffs have the burden of proof.

V. THE COURT BELOW ERRED IN HOLDING THAT THE PLAINTIFFS HAVE STANDING

Standing to assert a constitutional claim normally requires proof of a "concrete and particularized" injury. *Lujan v. Defenders of Wildlife*, 119 L. Ed. 2d 351, 364 (1992) (citations omitted). The Court below interpreted *Shaw v. Reno* as discarding normal standing doctrine and as conferring *automatic* standing on any voter in the state who desires to challenge any or all of a state's voting districts. State App. 50a, n.38. The Court should note probable jurisdiction to clarify that the same standing requirements apply to *white* plaintiffs challenging racial discrimination as to minority plaintiffs.[44]

Shaw v. Reno identified two types of injury that could, if proved, establish standing: 1) a voting rights district causes the representative to "represent a particular racial group rather than their constituency as a whole"; or 2) a district "reinforces racial stereotypes." 125 L. Ed. 2d at 530. Plaintiffs proved neither of these injuries, but instead showed the following:

District 18: Plaintiff Thomas has been "very favorably impressed" with congressional nominee Sheila

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[44]*See Allen v. Wright*, 468 U.S. 737 (1984) (stigmatic injury when government discriminates against racial minority group is insufficient harm to confer standing).

Jackson Lee[45] and expects that she will be a good congressional representative. Thomas Dep. 74. Sheila Jackson Lee does not ignore white voters and Thomas expects as a Congresswoman, Sheila Jackson Lee will reach out to white voters and try to build racial bridges. *Id.* at 78.

District 29: Plaintiff Thomas felt that Congressman Green did not represent her only because he is a Democrat and she is a Republican. Thomas Dep. at 47.

District 30: Plaintiff Orcutt stated that Congresswoman Johnson does not represent her because Orcutt has a conservative philosophy, but the complaints are *unrelated to race*. Orcutt Dep. at 20-24, 26.

Strong, uncontradicted evidence shows that the congressional representatives of Districts 18, 29, and 30 effectively represent their constituents, regardless of race or ethnicity.[46] The only evidence on racial stereotypes shows that minority opportunity districts help break down, rather than reinforce these notions, by giving highly-qualified

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[45]This past March, Councilwoman Sheila Jackson Lee defeated incumbent Congressman Craig Washington in the Democratic primary for nomination as the representative of District 18.

[46]*See, e.g.*, Lawson Ex. 7 ¶ 11; Lawson Ex. 9 ¶ 11; Lawson Ex. 10 ¶¶ 4, 9 (white voter in CD18); Lawson Ex. 12 ¶¶ 5, 7; Lawson Ex. 13 ¶ 3; Lawson Ex. 21 ¶¶ 9, 11, 16 (white voter in Dallas County); Lawson Ex. 22 ¶¶ 4, 6-7, 9 (white voter in CD30); Lawson Ex. 23, ¶¶ 10-14; Lawson Ex. 25 ¶¶ 7, 8, 9, 12 (white voter in CD30).

minority representatives, such as Barbara Jordan, exposure in the white community.[47]

Plaintiffs' claimed injury is the belief in "colorblind" districting. TR I:23 (Blum); *id.* at 29 (Chen); Thomas Dep. 69-70; Powers Dep. 48. Their disagreement with the 1991 redistricting plan falls far short of a "concrete and particularized" injury in fact.

CONCLUSION

For the reasons stated, the Court should note probable jurisdiction.

Respectfully submitted,

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[47]Lawson Ex. 7 ¶ 6 ("Barbara Jordan's . . . strong example made it easier for other African-American elected officials to gain some level of acceptance in the white community.").

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APPENDIX A

[FILED Oct. 3, 1994]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Civil Action No. H-94-0277

AL VERA, *et al.*,

Plaintiffs,

v.

ANN RICHARDS, *et al.*,

Defendants,

v.

REV. WILLIAM LAWSON, *et al.*,

Defendant-Intervenors,

v.

UNITED STATES OF AMERICA,

Defendant-Intervenor,

LEAGUE OF UNITED LATIN AMERICAN
CITIZENS (LULAC) OF TEXAS,
et al.,

Defendant-Intervenors.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Pursuant to Rule 18.1 of the Rules of the Supreme Court of the United States, notice is hereby given that the

Lawson Defendant-Intervenors -- William Lawson, Zollie Scales, Jr., Jew Don Boney, Deloyd T. Parker, Dewan Perry and Caesar Clark, David Jones, Fred Hofheinz, Judy Zimmerman -- appeal to The Supreme Court of the United States from the Order of September 2, 1994, as amended *nunc pro tunc* by Order of September 19, 1994, entered by the three-judge United States District Court for the Southern Distirct of Texas.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice of Appeal to the Supreme Court of the United States was served on the 28th day of September, 1994, by first class U.S. mail, postage prepaid, addressed as follows:

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APPENDIX B

[FILED Sept. 30, 1994]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Civil Action No. H-94-0277

AL VERA, *et al.*,

Plaintiffs,

v.

ANN RICHARDS, *et al.*,

Defendants,

v.

REV. WILLIAM LAWSON, *et al.*,

Defendant-Intervenors,

v.

LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC) OF TEXAS, ROBERT REYES, ANGIE GARCIA, ROBERT ANGUIANO, SR., DALIA ROBLES, NICOLAS DOMINGUEZ, OSCAR T. GARCIA, and RAMIRO GAMBOA, *et al.*,

Defendant-Intervenor Applicants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Pursuant to Rule 18.1 of the Rules of the Supreme Court of the United States, notice is hereby given that Defendant-Intervenors, Robert Reyes, Angie Garcia, Robert Anguiano, Sr., Dalia Robles, Nicolas Dominguez, Oscar T. Garcia, and Ramiro Gamboa, appeal to the Supreme Court of the United States from ¶¶ 2, 3 & 5 (plus the injunctive provision added by the Court's *nunc pro tunc* amended order of September 19, 1994) of the three-judge Court's Order of September 2, 1994 (subsuming within it the Court's declaration of the unconstitutionality of Texas Congressional Districts 18, 29 and 30 on page 93 of its Opinion of August 17, 1994).

This appeal is taken pursuant to 28 U.S.C. § 1253.

DATED: September 29, 1994

Respectfully submitted,

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Nos. 94-805/94-806

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

ANN RICHARDS, Governor of Texas, *et al.*,
Appellants,

v.

AL VERA, *et al.*,
Appellees.

REV. WILLIAM LAWSON, *et al.*,
Appellants,

and

ROBERT REYES, *et al.*,
Appellants,

v.

AL VERA, *et al.*,
Appellees.

On Appeal from the United States District Court for the Southern District of Texas

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MOTION TO AFFIRM

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QUESTIONS PRESENTED

Here, Texas had the ability to ensure minorities full, fair, and equal participation in the political process and the opportunity to elect their candidate of choice by drawing compact districts consistent with the Constitution. Instead, it chose to abandon all traditional districting principles and constructed districts with racial precision to create racially "safe" districts and to protect incumbents. Thus, the questions presented in this case are, under such circumstances:

1. Whether voters living in, or in districts adjacent to bizarrely shaped, racially "safe" districts have standing to challenge the constitutionality of such districts?

2. Whether the direct and circumstantial evidence that Texas was motivated by racial considerations in formulating Congressional Districts ("CDs") 18, 29, and 30, and their contiguous districts, was sufficient to trigger strict scrutiny?

3. Whether Texas has a compelling state interest in racial gerrymandering, particularly where there has been no showing that the lines drawn for CDs 18, 29, and 30 were required by the Voting Rights Act or were otherwise necessary to remedy past racial discrimination?

4. Whether Texas employed narrowly tailored means to advance its allegedly legitimate racial interests in creating CDs 18, 29, and 30, when Texas rejected many more compact, less bizarre alternatives?

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MOTION TO AFFIRM

Appellees respectfully urge that the Court affirm the judgment below invalidating portions of Texas House Bill 1 ("HB 1"), 72nd Tex. Leg., 2d C.S. (Aug. 29, 1991). A unanimous three-judge panel found that Texas CDs 18, 29, 30, and their surrounding districts, unconstitutionally segregate voters by race into districts that are among the most bizarre in the Nation. While the record below is sufficient to warrant summary affirmance under *Shaw v. Reno,* 113 S. Ct. 2816 (1993), Appellees believe

that this case presents an appropriate vehicle for the Court to provide useful additional guidance to state legislatures and lower courts by affirming the decision below after plenary review.

STATEMENT OF THE CASE

The districts at issue here have been much commented-upon. CD 30 has been described as "a microscopic view of a new strain of disease, and has been the subject of well-deserved national ridicule as the most gerrymandered district in the United States." *Terrazas v. Slagle*, 789 F. Supp. 828, 834 (W.D. Tex. 1991), *aff'd*, 113 S. Ct. 29 (1992). *Roll Call* awarded CD 30 first prize in its "gerrymander contest for the weirdest shaped 1992 districts." Appendix to Appellees' Motion to Affirm (App.) at 1a. CDs 29 and 18 received "honorable mention." *Id.* CD 29 has been likened to a "sacred Mayan bird," with its "plumed head ris[ing] northward . . . [and] ruffled feathers jut[ting] out at odd angles." Michael Barone and Grant Ujifusa, *The Almanac of American Politics* 1276 (1994). The interlaced boundaries of CDs 18 and 29 are described as "grotesque." *Id.* In drawing such districts, Texas rejected many more compact alternatives. Instead, the State "tortuously constructed [these districts] block-by-block and from one side of the street to another across entire counties to satisfy the desired racial goal." *Vera v. Richards*, No. H-94-0277, slip op. at 92, State App. 76a[1] (S.D. Tex. Aug. 17, 1994) ("*Vera*").

A. Background of Appellees' Challenge to Texas's Congressional Redistricting Plan

Texas is a multi-ethnic community. A significant number of Anglo voters in Texas support African-American and Hispanic candidates in both primary and general elections. For example, during the 1980s, African-Americans

[1] "State App. —a" refers to the Appendix to the Jurisdictional Statement For State Appellants.

comprised as little as 35%-40% of the population of old CD 18.[2] Yet Blacks were able to elect their candidate of choice in CD 18—from Barbara Jordan to Sheila Jackson Lee—100 percent of the time. *See Narrative of Voting Rights Act Considerations in Affected Districts* (Sept. 1991) ("*Narrative*"), App. at 9a; Plaintiffs' Exhibit 14K, App. at 17a. Generally, since 1983, African-Americans who comprised at least 40% of the population in any given Texas district have been able to elect their candidate of choice approximately 97% of the time. Plaintiffs' Exhibit 14K, App. at 17a. Since 1983, even when Blacks comprised as little as 35% of a district's population, they were still able to elect their candidate of choice almost 60% of the time. *Id.* The continued success of Black and Hispanic candidates in Houston's at-large elections illustrates the present-day level of Anglo cross-racial voting.[3] "In Texas in the 1990's, it is no longer accurate to assume that this condition [of Anglo majorities voting as a bloc to defeat minority candidates] exists in every case." *Vera*, slip op. at 87 n.54, State App. 71a n.54.

B. Development of Texas's Redistricting Plan

The population of Texas increased substantially between the 1980 and 1990 Census. As a result, Texas was apportioned three additional congressional districts, and had to redistrict. *Narrative*, App. at 3a. "[R]acial data were an omnipresent ingredient in th[is] redistricting process." *Vera*, slip op. at 69, State App. 59a. The computer

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[2] In 1980, African-Americans comprised only 40.8% of the population. Plaintiffs' Exhibit 13B at 55. By 1990, this figure had dropped to 35%. *Narrative of Voting Rights Act Considerations in Affected Districts* (Sept. 1991), App. at 9a.

[3] An African-American was elected as an at-large representative to the Houston City Council more than twenty years ago. Since that time, at least one member of the City Council elected at-large has been African-American; currently, there are two. Similarly, an Hispanic was first elected in an at-large city election more than 20 years ago; currently one Hispanic holds an at-large city-council seat.

system that Texas used to draw district lines, known as REDAPPL, constantly evaluated and displayed congressional districts, counties, cities, VTD's ("voter tabulation districts," or precincts), and even census blocks, by race. As a result, when the State redrew its congressional boundary lines, it had "nearly exact knowledge of the racial makeup of every inhabited block of land in the state." *Id.* at 2, State App. 1a-2a. Although REDAPPL could have handled additional information, the State chose not to enter any other demographic data (*e.g.*, income, education, etc.) on to the system. *Id.* at 69, State App. 59a. As a result, "REDAPPL certainly provided a readily available, efficient means of" allocating voters "on the basis of race." *Id.* at 26, State App. 26a.

C. Texas's Redistricting Plan

Rejecting more compact alternative redistricting plans, the Texas Legislature in 1991 adopted plan C657 as House Bill 1. Stipulation No. 30. This plan created three new racially "safe" districts for Blacks and Hispanics (CDs 28, 29, and 30), and increased the African-American population in another (CD 18).[4] The boundaries of all of these districts appear to be drawn exclusively to achieve the desired racial composition. *Vera*, slip op. at 70, State App. 59a-60a. ("In the Dallas Metroplex area and the Harris County area, . . . the racial character of the line-drawing is manifest.").[5]

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[4] Thirty-four Texas counties were split by this plan. Only six of these splits were required because the population of those counties exceeded the number of persons required for a single district. By comparison, the 1980 Congressional redistricting plan split just 10 counties. Three of those splits were required by the "one-person, one-vote" rule. See Plaintiffs' Exhibits 8, 27, 34-Q, and 36 at 12.

[5] *See also Vera*, slip op. at 38-39, State App. 35a-36a. Indeed, the same may be said about almost all of Texas's congressional districts. *Id.* at 46, State App. 41a ("Many of the remaining districts challenged by the plaintiffs share a troubling characteristic: counties appear to be split along racial lines.").

1. *CD 30 (Dallas County)*

"Throughout the course of the Congressional redistricting process, the lines of the proposed District 30 were constantly reconfigured in an attempt to maximize the voting strength for this black community in Dallas County." *Narrative*, App. at 4a. As a result, CD 30 "is at least 25 miles wide and 30 miles long, but those measurements do not begin to reveal the district's geographical complexity." *Vera*, slip op. at 74, State App. 62a. Sprawling throughout Dallas County, CD 30 splits all 21 of the municipalities found in the district. Plaintiffs' Exhibit 34T; *see* Attachment 1 (map of CD 30 showing split municipalities). It excludes wealthy Anglo neighborhoods such as Highland Park and University Park, but includes Hamilton Park, an affluent African-American neighborhood. It curls around Irving and takes in minority neighborhoods behind the Dallas-Fort Worth Regional Airport. At the same time, it extends fingers into Collin County, which includes only the outermost suburbs of Dallas, picking up one small African-American neighborhood. The district reaches into Tarrant County, where it picks up a small border area with a high African-American concentration. *See Vera*, slip op. at 74, State App. 62a; Attachment 2 (map of CD 30).*

"Part of the district [even] runs along the [uninhabited] Trinity River bottom, using it to connect dispersed minority population." *Vera*, slip op. at 74, State App. 62a. This was thought necessary, in part, because, as testified by Congresswoman (then State Senator) Eddie Bernice Johnson, "the principal architect" of CD 30, *id.* at 31, State App. 30a, since 1980 "the whole core of th[e Black] area was moving out." *Id.* at 30, State App. 28a. Al-

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* "Further, evidence in this case indicates that Congressional District 30 extends to the northern part of Dallas County specifically to include the Jewish Community Center and surrounding Jewish neighborhoods." *Vera*, slip op. at 5, State App. 7a (Hittner, J., concurring). As Judge Hittner noted, this religious gerrymandering "directly implicates equal protection principles" as well. *Id.* at 4, State App. 86a.

though some of the "many alternative proposals . . . showed a more compact configuration, none of them reached the threshold 50% total black population which the community felt was necessary to *assure* its ability to elect its own Congressional representative *without having to form coalitions with other minority groups*." *Narrative*, App. at 5a (emphasis added).[7]

Racially integrated residential neighborhoods in Dallas County present a substantial impediment to single-race majority districts. The only "remedy" to this residential integration is splitting precincts by race. Thus, after redistricting, 39% of the population of CD 30 lives in split precincts. Plaintiffs' Exhibit 34R. In addition, there are 17 precincts with fewer than 20 registered voters and 13 precincts with no registered voters at all. Plaintiffs' Exhibit 34Q. As the lower court found, "the contours of Congressional District 30 are unexplainable in terms other than race. They have no integrity in terms of traditional, neutral redistricting criteria. Neighborhoods, VTDs [precincts], and individual streets were split to achieve the district's racial mix." *Vera*, slip op. at 78, State App. 65a.[8]

2. CDs 18 and 29 (Harris County, Houston)

"Even more than in the case of District 30, Congressional Districts 18 and 29 were tailored to include designated numbers of minority voters." *Id.* An "appreciation for the precision with which this segregation of Hispanics and African-Americans in Harris County was carried out may not be had without a detailed look at the map of District 18 based on African-American popu-

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[7] For example, then-State Senator Johnson, who resided in (and now does) represent CD 30, submitted a plan proposing a more compact CD 30 that would have been 44 percent African-American and 33.3 percent Hispanic. Plaintiffs' Exhibit 98A.

[8] The court below rejected the State's assertion, relying on a demographic study compiled specifically for trial, that "there are socioeconomic, geographic, and other similarities among the residents of District 30." *Vera*, slip op. at 78, State App. 65a.

lation distribution by Census block and the map of District 29 based on Hispanic population distribution by Census block." *Id.* at 38, State App. 35a; *see also* Attachments 3 and 4 (maps of CDs 18 and 29). "In fact, these districts are so finely 'crafted' that one *cannot* visualize their exact boundaries without looking at a map at least three feet square." *Vera*, slip op. at 39, State App. 36a (emphasis in original).[9]

As in Dallas, Houston's integrated housing patterns were a practical barrier to the creation of compact districts where one minority group would constitute a majority. *Id.* ("The geographic dispersion of the various minority communities within Harris County is definitely an obstacle in drawing a majority-minority district each for African-Americans and Hispanics.") "[T]he population of CD 18 has shifted over the last ten years resulting in the current district having only 35.1% total black population and 42.2% total Hispanic population." *Narrative*, App. at 9a. Nonetheless, new CD 18 "contains 50.9% total black population and 15.3% total Hispanic. The Hispanic population that is currently in District 18 has been shifted to the newly proposed Hispanic District 29." *Id.* CD 29 is 60.6 percent Hispanic.[10]

"The effect of splitting dozens of VTD's to create Districts 18 and 29 was an electoral nightmare." *Vera*, slip op. at 43, State App. 39a. Many voters were "thrust into new and unfamiliar precinct alignments, a few with populations as low as twenty voters." *Id.* "In Districts 18 and 29, 60% of the residents live in split precincts after redistricting." *Id.* at 81, State App. 67a.[11] Similarly, all

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[9] Appellees have lodged such over-sized maps with the Court.

[10] In drawing these districts, the Texas Legislature again rejected more compact proposals. Eddie Bernice Johnson's plan for CD 18 would have been 46.9 percent African-American. Her proposed CD 29 would have been 47.6 percent Hispanic. Plaintiffs' Exhibit 29-A.

[11] Only 221 of the existing 672 precincts in Harris County were not split by the plan. Moreover, in Harris County alone, the

eight of the cities found in CD 18 have split populations and fourteen municipalities in CD 29 are split. Plaintiffs' Exhibit 34T; *see* Attachment 5 (map of CDs 18 and 29 showing split municipalities). Analysis of the split precincts revealed that "an overwhelming majority of those individuals placed in District 29 were Hispanic while an overwhelming majority placed in District 18 were African-American." *Vera*, slip op. at 82 n.51, State App. 68a n.51.

D. Department of Justice Preclearance

Texas's *Narrative* noted the Legislature's intention to ensure that the three new congressional seats apportioned to Texas:

> should be configured in such a way as to allow members of racial, ethnic, and language minorities to elect Congressional representatives. Accordingly, the three new districts include a predominantly black district drawn in the Dallas County area and predominantly Hispanic districts in the Harris County area and in the South Texas region. In addition to creating the three new minority districts, the proposed Congressional redistricting plan increases the black voting strength of the current District 18 (Harris County) by increasing the population to assure that the black community may continue to elect a candidate of its choice.

Narrative, App. at 3a; *see also Vera*, slip op. at 29-32, State App. 29a-31a (discussing the drawing of "safe" racially gerrymandered seats).[12]

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number of precincts rose from 672 to 1225, with 140 of those precincts having fewer than 20 registered voters. In addition, 62 precincts had no registered voters whatsoever. Plaintiffs' Exhibit 6E1 at 3. These single-race split VTDs are the building blocks of race-based districting.

[12] The extensive efforts to make these racially gerrymandered seats utterly "safe" highlights the disingenuousness of Texas's attempt to now characterize them as "opportunity" districts. *See, e.g.*, Texas Jurisdictional Statement at 4-8.

In preclearing the Texas Congressional redistricting plan pursuant to § 5 of the Voting Rights Act, the United States Attorney General took the remarkable step of expressing constitutional reservations:

> While we are precleering this plan under Section 5, the extraordinarily convoluted nature of some districts compels me to disclaim any implication that the proposed plan is otherwise lawful or constitutional.

Id. at 3, State App. 8a.

E. The *Terrazas v. Slagle* Litigation

Texas's original redistricting plan was unsuccessfully challenged under the Voting Rights Act. At trial, Congresswoman Johnson testified that race was the most important factor in the redistricting process. For example, when asked whether a dominant goal existed in redistricting Dallas County, she replied:

> I had made a commitment to the Black community, that they would have a safe district, as had been mandated and expected for a number of years, and I did not intend to go home without that.

Id. at 29, State App. 28a. "In sum, Congresswoman Johnson testified in *Terrazas* that the shape of Congressional District 30 . . . can be understood as a conscious effort to pick up African-American voters who had dispersed from the core area." *Id.* at 31, State App. 29a.[13] Similarly, Representative Martinez, "the primary architect of the lines in Harris County," *id.* at 41, State App. 37a, testified that the creation of two single-race majority dis-

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[13] Congresswoman Johnson further elaborated that, in drawing CD 30, she did not worry about the influences of incumbent Congressmen Martin Frost or John Bryant. *Vera*, slip op. at 31, State App. 30a ("I got beat up so many times because I wouldn't do anything but look out for Black voters.").

tricts was the primary motivating factor in the redistricting of Harris County.[14]

F. Decision Below

The plaintiffs in this case are six registered voters who reside in CDs 18, 25, 29, and 30. All have been involved in grass-roots political organizations, as well as in civic or public affairs. One, Al Vera, is partly Hispanic and partly Native-American. He lives in CD 29. Another plaintiff, Dr. Ed Chen, is a fourth-generation Chinese-American. A third, Edward Blum, was a candidate for Congress from the new CD 18 in 1992.

Plaintiffs filed this constitutional challenge on January 26, 1994.[15] The case was tried before a three-judge panel on June 27-30, and concluded on July 1, 1994. The District Court filed its Opinion on August 17, 1994. The court concluded that Texas "repeatedly segregated [African-American, Hispanic, and Anglo] populations by race to further the prospects of incumbent officeholders or to create 'majority-minority' Congressional districts." *Vera*, slip op. at 2, State App. 8a. It found that CDs 18, 29, and 30

> were conceived for the purpose of providing 'safe' seats in Congress for two African-American and an Hispanic representatives [sic]. They were scientifically designed to muster a minimum percentage of the favored minority or ethnic group, minority num-

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[14] *Vera*, slip op. at 41, State App. 37a ("[I]t was a very important goal as a Hispanic representative to insure that we created for the first time a Congressional seat for the Hispanic community to elect the first Hispanic Congressman.") (quoting testimony of Rep. Martinez).

[15] Their original complaint asked for a permanent injunction and declaratory judgment against the Governor, the Lieutenant Governor, the Attorney General, and the Secretary of State, as well as the Speaker of the Texas House of Representatives. The court later granted the motions to intervene of six African-American voters ("Lawson Intervenors"), the United States, and seven registered Hispanic voters and the League of United Latin American Citizens ("Bayes Intervenors").

> bers are virtually all that mattered in the shape of those districts. Those districts consequently bear the odious imprint of racial apartheid, and districts that intermesh with them are necessarily racially tainted.

Id. at 4, State App. 9a.

The court rejected Texas's argument that incumbent protection, and not invidious racial discrimination, explained the bizarre nature of the districts. It said:

> [T]he policy of incumbent protection, to the extent it motivated the Legislature, was not a countervailing force against racial gerrymandering. Instead, racial gerrymandering was an essential part of incumbency protection, as African-American voters were deliberately segregated on account of their race among several Congressional districts.

Id. at 78, State App. 65a.

Applying strict scrutiny, the court found that, even if the Voting Rights Act could substantiate a compelling governmental interest, the State's admission "that more traditional districts could have been fashioned" made it "impossible" for the State to argue "that Districts 18, 29, and 30 are 'narrowly tailored' to fulfill the State's obligations under the Voting Rights Act and would thus withstand the strict scrutiny test." *Id.* at 85, State App. 70a.[36]

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[36] With respect to certain other Texas congressional districts plaintiffs challenged as unconstitutional, the court found "an extremely high correlation between the irregular features of many of these districts and the racial populations they are drawn to include or exclude." *Vera*, slip op. at 90-91, State App. 75a; *see also* Plaintiffs' Exhibit 14H. Nonetheless, the court determined that "it does not follow . . . that racial gerrymandering occurred." *Vera*, slip op. at 91, State App. 75a. The court based this judgment on its view that the outlines of these other districts were not "highly irregular apart from the small racially distinct appendages." *Id.* Plaintiffs respectfully disagree. They have decided not to appeal that factual determination, however, to simplify the case for the Court, because of limited resources, and because the pending Louisiana case presents the issue of rural, as opposed to urban, gerrymanders. *See Hays v. State of Louisiana*, 862 F. Supp. 119 (W.D. La. 1994), appeal filed, 63 USLW 3295 (U.S. Sept. 26, 1994)

The State's notice of appeal was filed on September 22, 1994, and its Jurisdictional Statement was submitted on October 31, 1994. The Lawson and Reyes Defendant-Intervenors submitted their Jurisdictional Statement on November 2, 1994. This Court has jurisdiction under 28 U.S.C. § 1253.

GROUNDS FOR AFFIRMANCE

In *Shaw v. Reno*, 113 S. Ct. 2816 (1993), this Court held that challenges to districts that are "so extremely irregular on [their] face that [they] rationally can be viewed only as an effort to segregate the races for the purposes of voting, without regard to traditional districting principles and without sufficiently compelling justification" state "a cognizable claim" under the Equal Protection Clause. *Id.* at 2820, 2824. The *Shaw* Court, however, did not determine the merits of that challenge, remanding it for further consideration. This case presents a straight-forward, and appropriate, opportunity for the Court to apply *Shaw* in a concrete context and thus provide additional guidance to lower courts and state legislatures.

The extensive record and the careful opinion below squarely present the question of whether a state may intentionally construct highly bizarre districts on the basis of race solely to maximize a single race's voting strength or to protect incumbents. Moreover, Texas has drawn such districts where (a) it was under no legal compulsion to do so, and (b) it admittedly rejected more compact alternatives that would have achieved the goal of enhancing minority representation but which would not have relied so heavily on the impermissible criterion of race.

To win this case, Appellees do not and need not attack the State's ability to draw compact, majority-minority districts that comply with traditional districting

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(No. 94-558) ("*Hays II*"). Moreover, affirmance of the decision below would force the Texas Legislature to redraw essentially all of its congressional districts in a manner consistent with the Constitution.

principles. Rather, Appellees object to Texas's use of race in two contexts. First, without showing a need to overcome racial bloc voting, the State relies on race to draw districts that guarantee to a designated racial or ethnic group the ability to determine the outcome of an election through its own bloc voting without its having to forge alliances with any other group. Second, the State maintains that it may use race to assure the reelection of incumbents.

In the Texas of the 1990s, the State need not rely upon districts dominated by African-Americans, Hispanics, or Anglos. Rather, the choice here is between creating bizarre, racially "safe" districts for the benefit of a specific minority group, on the one hand, or creating compact, racially competitive districts on the other. Given these choices, perverting American politics as Texas did is entirely unjustified and unconstitutional.

The Court has pending before it at least four other cases involving *Shaw* claims.[17] This case is unlike those other cases, though, in that it involves racial gerrymandering in an urban context. Moreover, the State here admittedly rejected more compact alternatives that still would have enhanced electoral opportunity for minorities in Texas without elevating race over all other considerations. Also, the State was under no credible legal compulsion to racially gerrymander as it did. Thus, regardless of whether the Court chooses to review any of the other pending cases, this case presents discrete and important questions concerning the proper application of *Shaw*, and warrants affirmance after plenary review.

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[17] *See Hays II*, 862 F. Supp. 119; *Johnson v. Miller*, 1994 WL 506780 (S.D. Ga. Sept. 12, 1994), *appeal filed*, 63 USLW 3314 (U.S. Oct. 6, 1994) (No. 94-631); *Shaw v. Hunt*, 861 F. Supp. 408 (E.D.N.C. 1994), *appeal filed*, —— USLW —— (U.S. Nov. 21, 1994) (No. 94-923); *DeWitt v. Wilson*, 856 F. Supp. 1409 (E.D. Cal. 1994), *appeal filed*, 63 USLW 3127 (U.S. Aug. 8, 1994) (No. 94-275).

I. DISTRICTS 18, 29, AND 30 ARE SUFFICIENTLY BIZARRE TO GIVE APPELLEES STANDING TO CHALLENGE THEM UNDER THE FOURTEENTH AMENDMENT.

Appellants' allegation that Appellees lack standing ignores *Shaw v. Reno* and *Gomillion v. Lightfoot*, 364 U.S. 339 (1960) (group of Blacks had standing to challenge Alabama's reformulation of the City of Tuskegee's boundaries to exclude them). As every post-*Shaw* court to consider the issue of standing has concluded, voters in the state have standing to challenge bizarrely shaped districts that appear to be explainable only on the basis of race.[18] Appellees here therefore satisfy the requisite elements of standing to assert such a claim.

A. A Voter Has Standing To Challenge A Redistricting Scheme That Appears So Bizarre That It Cannot Be Understood As Anything Other Than A Racial Gerrymander.

In *Shaw v. Reno*, this Court recognized that "reapportionment legislation that cannot be understood as anything other than an effort to classify and separate voters by race . . . reinforces racial stereotypes and threatens to undermine our system of representative democracy by signaling to elected officials that they represent a particular group rather than their constituency as a whole." *Shaw v. Reno*, 113 S. Ct. at 2828. Under this notion of harm, a voter is injured by any redistricting scheme that "cannot be understood as anything other than an effort to separate voters into different districts on the basis of race." *Id.* As *Shaw* expressly held, such harm is cognizable under the Fourteenth Amendment, *id.* at 2820, and thus grants standing to sue. *Vera*, slip op. at 58 n.38, State

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[18] *See, e.g., Vera*, slip op. at 58 n.38, State App. 50a n.38 (concluding that plaintiffs have standing); *Shaw v. Hunt*, 861 F. Supp. at 425 ("[P]laintiffs have adequately established their standing . . . ."); *Miller*, 1994 WL 506780 at *13 ("standing in this case is not in doubt."); and *Hays v. State of Louisiana*, 839 F. Supp. 1188, 1192-93 (W.D. La. 1993) ("*Hays I*") (same).

App. 50a n.38. (The *Shaw* Court "inferentially decided [that the *Shaw* plaintiffs] had constitutional standing to sue."); *see also Miller*, 1994 WL 506780 at *12 (same).

Here, at least one Appellee lives in each of the CDs that the lower court declared to be unconstitutional. *See* Texas Jurisdictional Statement at 20-21. Others live in the distorted neighboring districts. Thus, "[t]he plaintiffs . . . have standing to maintain the Equal Protection claim . . . because they have established that they are registered to vote in [Texas's] congressional elections and that the challenged redistricting plan assigns them to vote in particular electoral districts at least in part because of their race." *Shaw v. Hunt*, 861 F. Supp. at 473.

B. Appellees Suffered Cognizable Stigmatic And Systemic Harms Because Of The Bizarre Nature Of The Racially Gerrymandered Districts.

The Appellees in this case particularly suffer from the type of stigmatic and systemic harms that *Shaw v. Reno* identifies as problematic. Mr. Blum testified that he felt stigmatized by Texas's racially polarized redistricting process. *See* Texas Jurisdictional Statement at 20. Appellee Vera was stigmatized by the perpetuation of the stereotype that, as an Hispanic, he "think[s] alike, share[s] the same political interests, and prefer[s] the same candidates [as other Hispanics]." *Shaw v. Reno*, 113 S. Ct. at 2818.

Moreover, as discussed below, the bizarre districts here create barriers to political participation, candidate effectiveness, and responsive representation. *See* Section II.B.2, pp. 20-21, *infra*. Appellees have unquestionably suffered cognizable injuries due to HB 1. Those injuries would be redressed by the constitutional reconfiguration of these districts. The Appellees here satisfy the standing requirements for a *Shaw v. Reno* claim.

II. IN FORMULATING AND DRAWING "SAFE," SINGLE-RACE MAJORITY DISTRICTS 18, 29, AND 30, TEXAS ENGAGED IN INVIDIOUS RACIAL GERRYMANDERING, WHICH TRIGGERS STRICT SCRUTINY.

Although HB 1, like all redistricting legislation, is nominally race-neutral, the direct and indirect evidence in this case overwhelmingly establishes that Texas has "segregate[d] the races for purposes of voting, without regard for traditional districting principles." *Shaw v. Reno*, 113 S. Ct. at 2824. "In this case . . . the legislature's intent was proven directly, through testimony of legislators, the § 5 preclearance submission, and the use of racial data on the REDAPPL system, as well as inferentially from the makeup of the districts themselves." *Vera*, slip op. at 77 n.47, State App. 64a n.47. HB 1 must therefore be subjected to "the same close scrutiny that [the Court] give[s] other state laws that classify citizens by race." *Shaw v. Reno*, 113 S. Ct. at 2825. HB 1 may be upheld only if it is "narrowly tailored to further a compelling state interest." *Id.*[19]

A. There Is Overwhelming Direct Evidence That Texas Was Motivated By Racial Considerations When It Formulated Congressional Districts 18, 29, And 30.

The testimony of Texas officials in *Terrazas v. Slagle* and the State's own *Narrative* acknowledge that Texas's primary goal in redistricting was to segregate voters by race. *See* pp. 4-10, *supra*. Congresswoman Johnson's testimony in *Terrazas v. Slagle*, discussed at length above, is particularly revealing.[20] The *Narrative*, like the

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[19] That the purpose of Texas's racial classification is ostensibly "benign" by no means reduces the close scrutiny that Texas's race-based determination warrants. *See, e.g., Shaw v. Reno*, 113 S. Ct. at 2829 (rejecting contention that racial gerrymandering does not create a constitutional problem when district lines are drawn to favor a minority, rather than the majority).

[20] *See* pp. 9-10, *supra*.

State's submission here, proves that Texas's goal was to construct districts "in such a way as to allow members of racial, ethnic, and language minorities to elect Congressional representatives." *Narrative,* App. at 3a.[21]

As the lower court found, all other considerations took a back seat to this overtly racial motivation. The State apparently adopted Congresswoman Johnson's erroneous (and unconstitutional) view of the Voting Rights Act. She testified that:

> See, in my judgment, the Voters [sic] Rights Act protects voters—not land, not boundaries—other than the State line. . . . And gerrymandering is permitted, as long as it's to enhance the enfranchisement of the minority voters.

Plaintiffs' Exhibit 8B at 253.[22]

B. Texas's Disregard For Traditional Districting Principles Further Demonstrates That Race Was A Motivating Factor In Drawing Districts 18, 29, And 30.

Alternatively, this case can also be affirmed under the inferential approach approved in *Shaw*. *Shaw* establishes that plaintiffs can show that a state's redistricting plan was motivated by race "*indirectly* or *inferentially*. Racial gerrymandering . . . can be inferred when districts are so bizarrely shaped that they presumptively bespeak an impermissible purpose." *Hays v. State of Louisiana,* 839 F. Supp. 1188, 1195 (W.D. La. 1993) (*"Hays I"*) (emphasis in original). This is one of the cases where, as the *Shaw* Court accurately predicted, it is "not . . .

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[21] *See also* Texas's Jurisdictional Statement at 7-8 (conceding that Texas was "race-conscious" in drawing CDs 18, 29, and 30); *Narrative,* App. at 9a (the changes in CD 18 and the configuration of CD 29 "result in the maximization of minority voting strength for this geographical area.").

[22] *Contra Johnson v. DeGrandy,* 114 S. Ct. 2647, 2660 (1994) ("[f]ailure to maximize [the number of majority-minority districts] cannot be the measure of § 2").

difficult at all" to show that strict scrutiny applies. *Shaw v. Reno*, 113 S. Ct. at 2826. Texas has "concentrate[d] a dispersed minority population in a single district by disregarding traditional districting principles such as compactness, contiguity, and respect for political subdivisions." *Id.* at 2827 (emphasis added). On this basis alone, Appellees meet their burden of presenting *prima facie* evidence that Texas engaged in racial gerrymandering. *See Shaw v. Hunt*, 861 F. Supp. at 440.

1. *The Challenged Districts Are Extraordinarily Non-Compact*

CDs 18, 29, and 30 are among the least compact congressional districts in the United States.[23] Specifically, CDs 18 and 29 have the least regular borders in the Nation. *See* Richard H. Pildes & Richard G. Niemi, *Expressive Harms, "Bizarre Districts," And Voting Rights: Evaluating Election-District Appearances After Shaw v. Reno*, 92 Mich. L. Rev. 483, 565 (1993) ("Pildes & Niemi") (ranking CDs 18 and 29 as tied for first with two other congressional districts as having the least regular borders in the country).[24] Texas CD 30 is similarly

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[23] The Appellants repeatedly denigrate as subjective and unduly activist a judicial inquiry into whether districts are, in fact, compact. Lawson & Reyes Jurisdictional Statement at 20; Texas Jurisdictional Statement at 18-19. The federal courts have been undertaking such an analysis for years, however, in the context of § 2 claims under the Voting Rights Act, with reasonably predictable and consistent results. *See, e.g., Growe v. Emison*, 113 S. Ct. 1075, 1084 (1993).

[24] A district's relative compactness turns on how dispersed or spread out its borders are. A district's relative contiguousness turns on the degree to which its borders are regular in shape and equal in length. Pildes & Niemi at 549. Voting rights scholars measure a district's relative compactness by taking the ratio of the district's area to the area of the smallest circle that completely encloses the district (yielding the district's "dispersion or compactness score"). *Id.* at 554. A district's relative contiguousness is measured by taking the ratio of the district's area to the area of a circle with the same perimeter (yielding a district's "perimeter" or contiguousness score). *Id.* Districts with the most regular

determined to be among those districts with the least regular borders. *Id.*[25] In addition, CDs 18, 29, and 30 are well below the national median when measuring compactness. *Id.*

The extraordinarily non-compact nature of CDs 18, 29, and 30 powerfully suggests that Texas has engaged in invidious discrimination in formulating its reapportionment plan. As discussed above and as the maps reveal, the districts' outer boundaries do not follow natural geographical features. Rather, they zig-zag, widen, and narrow with geographic irrationality but racial precision. The borders are explainable by one factor and one factor only—that is, the race of the residents who are included and excluded from the districts. *See Vera,* slip op. at 38 & 78, State App. 36a & 65a. *See also id.* at 70, State App. 60a ("The borders of Districts 18, 29 and 30 change . . . in seemingly arbitrary fashion until one realizes that those corridors connect minority populations.").

The State and Lawson/Reyes Intervenors essentially contend that any district drawn within an urban area is sufficiently compact. Texas Jurisdictional Statement at 15-17; Lawson/Reyes Jurisdictional Statement at 11-13, 24-25. This position is untenable. If anything, the urban context of these districts provides additional evidence of impermissible racial gerrymandering. As the District Court below stated,

> all parties and their expert witnesses agreed, compactness must be a relative measure for Legislative districts. . . . In a major urban county, compactness makes little sense if considered in terms of geographic sprawl alone, but it seems far more probative when

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borders score 1.0; those with the least regular borders score .00. Texas CDs 18 and 29 score a 0.1 on this scale, and Texas CD 30 earns a .02 perimeter score. *Id.* at 565.

[25] That a district is literally contiguous is irrelevant. A state can draw a contiguous district around any group of voters, no matter where each voter lives. *See Marylanders for Fair Representation, Inc. v. Schaefer,* 849 F. Supp. 1022, 1052 n.38 (D. Md. 1994).

> viewed in terms of a city's or county's neighborhoods, geopolitical subdivisions, and business location. Adjusting the sense of compactness to the complexity and population density of the urban landscape demonstrates that Districts 18 and 29 are not compact at all. Their contorted shapes are the antithesis of compactness.

Vera, slip op. at 83, State App. 68a-69a.

2. *The Failure of CDs 18, 29, And 30 To Respect Existing Political Subdivisions And Communities Harms Political Participation And Responsiveness.*

A legislative district can do violence to existing political subdivisions even when the district is entirely within one large political subdivision, such as a county.[26] CDs 18 and 29 divide 16 municipalities, while CD 30 splits 21. *See* Plaintiffs' Ex. 34T; *see also* Attachments 1 and 5.[27] Plainly, these districts fail to accommodate existing political subdivisions.

Apart from shape and size, district lines that undermine effective political organization and inhibit meaningful voter participation fail to satisfy traditional districting principles.[28] The isolated and distended pockets of voters created by the otherwise irrational construction of the districts under challenge here spawned administrative con-

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[26] *See, e.g., Growe*, 113 S. Ct. at 1083-85 (holding that a state senate district which split up sections of Minneapolis was an "oddly shaped creation" of "dubious" compactness); *Gomillion*, 364 U.S. at 341 (concluding that an "uncouth" 28-sided city map was "not an ordinary geographic redistricting measure").

[27] Attachments 1 and 5, with each splintered municipality in a different color, demonstrate the extent to which CDs 18, 29, and 30 fail to respect existing political subdivisions and destroy cohesive neighborhood interests.

[28] *See, e.g., East Jefferson Coalition for Leadership & Dev. v. Jefferson Parish*, 691 F. Supp. 991, 1007 (E.D. La. 1988) (district running along river shore that shot across the river to include a pocket of African-American residents failed to maintain a recognizable community and precluded effective political representation).

fusion and electoral barriers to voter participation. *See Vera,* slip op. at 43, 67 n.43 & 78, State App. 39a, 56a n.43 & 66a-67a. To illustrate, voters were frustrated and confused by the meandering shape of CD 18. They did not know the candidates running for office, and asked why the district had been arbitrarily changed. *See* Powers Dep. at 43-44, App. at 20a-21a. The numerous and artificial boundaries meant that neighbors could not discuss candidates with each other.

In addition, "a district should not be so convoluted that its representatives could not easily tell who actually lives in the district." *East Jefferson Coalition for Leadership & Dev. v. Jefferson Parish,* 691 F. Supp. 991, 1007 (E.D. La. 1988).[29] These districts fail such a standard. For example, Appellee Blum and his wife "spent months walking the entire district in order to shake hands with the voters. They had to carry a map to identify the district lines, because so often the borders would move from block to block." *Vera,* slip op. at 80, State App. 66a-67a.

The disfiguration of these districts along bizarre racial lines also undercuts all notions of political responsiveness. Revealingly, former CD 18 Representative Craig Washington informed a Houston television audience that he was elected to represent the African-Americans of Houston and that he was "not supposed to represent everyone in the 18th District." Access Houston Cable T.V. (Apr. 14, 1992).

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[29] *See also Bryant v. Lawrence County,* 814 F. Supp. 1346, 1350-51 (S.D. Miss. 1993) (district that carved up sections of a county and crossed a river where there are no bridges split up established neighborhoods and made it difficult for elected officials to traverse the district); *Gunn v. Chicksaw County,* 705 F. Supp. 315, 322-23 (N.D. Miss. 1989).

C. Showing That Voters Were Allocated By Race To Protect Incumbents Does Not Defeat A Claim That Strict Scrutiny Applies.

Texas claims that its primary motive in constructing the bizarre districts at issue here was not creating racially "safe" districts, but a desire to protect incumbents. First, as demonstrated in Section II(A)-(B), *supra*, the direct and indirect evidence precludes the State from carrying its "burden of establishing that the same decision would have resulted even had the impermissible purpose not been considered." *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 271 n.21 (1977). Second, despite Texas's claims to the contrary, Appellees need not show that race was the *only* factor that motivated Texas to draw district lines as it did. Rather, for strict scrutiny to apply, Appellees simply need to prove what is inescapably the case here—that race was a "motivating factor" in the creation of the district in question. *Arlington Heights*, 429 U.S. at 264-65 (rejecting contention that plaintiffs must show that challenged state action "rested solely on racially discriminatory purposes") (relying on *Washington v. Davis*, 426 U.S. 229 (1976)).[30] Indeed, any other conclusion would negate *Shaw*; "[a] state legislature could always trot out some other traditional districting principle minimally served by the shape

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[30] *See also Regents of University of California v. Bakke*, 438 U.S. 265, 288, 299-310 (1978) (subjecting racially separate admissions program to strict scrutiny despite fact that state medical school had other, non-racial reasons for the program, including pursuit of educational diversity); *Shaw v. Hunt*, 861 F. Supp. at 431 (requiring evidence that "racial considerations played a 'substantial' or 'motivating' role in the line-drawing process"); *Miller*, 1994 WL 506780 at *16-*17 (same); *Hays I*, 839 F. Supp. at 1198 ("[p]laintiffs have the burden of demonstrating by a preponderance of the evidence that the Legislature was 'motivated by racial considerations' ") (*quoting Wright v. Rockefeller*, 376 U.S. 52, 55 (1964)).

in question." *Miller*, 1994 WL 506780 at *16 (citation omitted).[31]

Thus, Texas cannot shield HB 1 from strict scrutiny by claiming, *post hoc*, that the ultimate reason it segregated voters by race was to protect existing incumbents. This Court has never condoned incumbent protection in which "the representatives have selected the people," instead of "the people select[ing] their representatives," *Vera*, slip op. at 66, State App. 56a, as a legitimate—let alone compelling—redistricting criterion that would justify an invidious racial classification. *Id.* at 88, State App. 72a.

True, this Court has not held that gerrymandering to protect incumbents is "in and of itself" unconstitutional. *Burns v. Richardson*, 384 U.S. 73, 89 n.16 (1966) (that "district boundaries may have been drawn in a way that minimizes the number of contests between present incumbents does not in and of itself establish invidiousness"). And in *White v. Weiser*, 412 U.S. 783, 791 (1973), the Court noted that it did not "disparage" state attempts to protect incumbents. These decisions, however, countenance, but hardly endorse, drawing districts to avoid contests between incumbents or to preserve the shape of the prior districts.

Certainly, prior cases cannot be relied upon to justify racial gerrymandering to aid existing incumbents. As the lower court held,

> never before have districts been drawn on a block-by-block or neighborhood- or town-splitting level to corral voters perceived as sympathetic to incumbents or to exclude opponents of the incumbents. This form of incumbent protection is much different in degree from the generalized, and legitimate, goal of

[31] Under the State's view, for example, any nominally contiguous district would defeat a *Shaw* claim. A state could always show that it had taken at least one other factor—contiguity—into account. *See also Shaw v. Hunt*, 861 F. Supp. 408.

> incumbent and seniority protection previously recognized by the Supreme Court.

Vera, slip op. at 65, State App. 55a (citing cases).

The State and Lawson/Reyes Intervenors essentially contend that the existence of an additional, non-racial justification of incumbent protection permits Texas to segregate voters by race without being subjected to strict scrutiny. This sweeping contention, if accepted, would negate all *Shaw* claims. "Politics and political considerations are inseparable from districting and apportionment." *Gaffney v. Cummings*, 412 U.S. 735, 753 (1973). If all a state had to do to justify race-based redistricting was show that the borders were also responsive to political concerns, no voter could ever successfully challenge racial redistricting.[32]

The lower court unequivocally found that "incumbent protection in Dallas County involved the allocation of African-American voters among the districts," *Vera*, slip op. at 35, State App. 33a, and that "the goal of incumbent protection was itself realized by the deliberate segregation of voters on the basis of race in the Harris County metropolitan area." *Id.* at 82, State App. 68a. The Fourteenth Amendment prohibits such race-based allocation and segregation. Accordingly, strict scrutiny applies.[33]

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[32] The State contends that the borders resulted from a struggle over Democrats, not African-Americans. *See* Texas's Jurisdictional Statement at 5, 8, and 14. The lower court properly rejected this claim, concluding: "The State cannot have it both ways. It cannot say that African-American voters are African-American when they are moved into District 30, but they are merely 'Democrats' when they are deliberately placed in a contiguous district for the purpose of bolstering the re-election chances of other Democrats." *Vera*, slip op. at 77, State App. 64a. *See also id.* at 29-33, 37-69, State App. 28a-31a, 33a-60a (finding persuasive the testimony in the *Terrazas v. Slagle* case that race was the primary motivation in districting).

[33] *United Jewish Organizations of Williamsburgh v. Carey*, 430 U.S. 144 (1977) ("*UJO*"), on which the State relies, is inapposite.

III. TEXAS HAS NOT AND CANNOT SHOW THAT IT HAS A COMPELLING STATE INTEREST IN RACIALLY GERRYMANDERING "SAFE" DISTRICTS 18, 29, AND 30.

Given the overwhelming direct and indirect evidence of invidious racial discrimination here, Texas bears the burden of showing that its racial classifications are necessary to serve a compelling governmental interest and are applied in a narrowly tailored manner.[34] It is argued that this burden is satisfied because the Voting Rights Act required Texas to create these three single-race majority districts.[35] This argument is in error. First and foremost, the Voting Rights Act cannot—and does not—require the creation of districts that would violate the Constitution. Thus, Texas may not employ racial classifications where, as here, it has failed to demonstrate the existence of racial bloc voting.[36] "*Shaw* makes it plain that the state's intention to

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Here, Texas was under no legal compulsion to draw the districts along racial lines as it did. Moreover, *UJO* involved the drawing of *compact* majority non-white districts. Thus, unlike the case here, race did not override all traditional districting considerations.

[34] Once a plaintiff has successfully shown that strict scrutiny applies, the state must justify its race-based determination. *Shaw v. Reno*, 113 S. Ct. at 2825, 2832; *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 505 (1989); *Miller*, 1994 WL 506780 at *21. Thus, even though the Appellees bear the ultimate burden of proof with respect to their constitutional claim, the State must make an affirmative showing that its action satisfies strict scrutiny. *Vera*, slip op. at 85, State App. 70a ("[T]he State has the burden of producing evidence of narrowly tailoring to achieve its compelling state interest.").

[35] The United States took this position below. *See Vera*, slip op. at 86-87, State App. 71a-72a.

[36] Even if Texas could prove that such bloc voting is an impediment to minority participation in the political process—and it cannot—Texas may not use such a showing as an excuse to disregard all other considerations by drawing bizarre districts. *See Shaw v. Reno*, 113 S. Ct. at 2832 ("race-based districting, as a response to racially polarized voting, is constitutionally permissible only when the State 'employ[s] sound districting principles,' ") (*quoting UJO*, 430 U.S. at 167-68).

comply with the Voting Rights Act when it created such [bizarrely shaped] districts [for the purpose of racially segregating voters] will not necessarily save it constitutionally; the Voting Rights Act may not be used to sanction the 'racial apartheid' that *Shaw* and the Fourteenth Amendment condemn." *Vera*, slip op. at 84, State App. 69a.

In any event, the Voting Rights Act may have permitted the creation of certain majority-minority districts, but it by no means compelled their creation. *Shaw v. Reno*, 113 S. Ct. at 2830 ("[I]n the context of a Fourteenth Amendment challenge, courts must bear in mind the difference between what the law permits, and what it requires."). Texas has failed to show that it was required to draw any of the challenged districts as it did under either § 2 or § 5.

HB 1 changed CD 18 from a compact, competitive district with a 35.1% total Black population into a bizarre, racially "safe" district of 50.9%. In addition, HB 1 created three other "safe" single-race majority districts—CDs 28, 29, and 30. None of these changes was required by the Voting Rights Act.

Texas has not and cannot show that the three preconditions for a vote-dilution claim under *Thornburg v. Gingles*, 478 U.S. 30 (1986), are present. *Shaw v. Reno*, 113 S. Ct. at 2830 (three *Gingles* conditions "never can be assumed, but specifically must be proved in each case"). The first factor—that the "[minority group] is sufficiently large and geographically compact to constitute a majority in a single-member district," *Gingles*, 478 U.S. at 50-51—presupposes compact districts that conform to traditional districting principles. As discussed above, these districts quite plainly fail that test. *See* Section II(B)(1)-(2), pp. 18-21, *supra*.

Nor has Texas proven the third *Gingles* factor: "that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate."

Gingles, 478 U.S. at 50-51. As the lower court found, "[i]n Texas in the 1990's, it is no longer accurate to assume that this condition of *Gingles* exists in every case." *Vera*, slip op. at 87 n.54, State App. 71a n.54. Evidence of cross-racial voting eliminates any possible claim that the State was required to create single-race majority voting districts under § 2. *Id.* at 87-88, State App. 71a-72a.[37]

Moreover, even when a minority community's preferred candidate is defeated, *Gingles* requires proof that an Anglo racial voting bloc *systematically* denies minorities the opportunity to elect the candidates of their choice. Given the degree of racial cross-voting that takes place today in Texas,

> there are communities in which minority citizens are able to form coalitions with voters from other racial and ethnic groups, having no need to be a majority within a single district in order to elect candidates of their choice. Those candidates may not represent perfection to every minority voter, but minority voters are not immune from the obligation to pull, haul, and trade to find common political ground.

Johnson v. DeGrandy, 114 S. Ct. 2647, 2661 (1994). *See also League of United Latin American Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 850-51 (5th Cir. 1993) (*en banc*) (concluding that minority judicial candidates were defeated because of partisanship not race).

Thus, Texas's contention that § 2 mandated HB 1 is "wholly unsupported" and "incorrect." *Vera*, slip op. at 86-87 n.54, State App. 71a n.54.[38] In addition, as the

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[37] *See also Miller*, 1994 WL 506780 at *34 (holding that evidence that white Georgia voters voted for Black congressional candidates from 22% to 38% of the time and that Black voters supported white candidates from 20% to 23% of the time indicated a "lack of solid evidence of black vote cohesion or rampant bloc voting;" thus, § 2 was not triggered).

[38] Likewise, Texas cannot rely on § 5 of the Voting Rights Act to justify HB 1. First, § 5 only requires a state "to preserve

District Court found, Texas has utterly failed to adduce any other studied and legitimate justification for its racial classification.[39]

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extant 'minority' Districts; it [does] not require the creation of new minority [d]istricts." *Vera*, slip op. at 87 n.54, State App. 71a n.54 (citing *Beer v. United States*, 425 U.S. 130, 141 (1976)). Thus, there can be no argument that § 5 required the creation of CDs 29 or 30. In addition, states are not obligated to preserve minority districts, where, as in CD 18, the minority population has moved away. *See, e.g., City of Richmond, Virginia v. United States*, 422 U.S. 358, 371 (1975). Moreover, § 5 does not give covered jurisdictions "*carte blanche* to engage in racial gerrymandering in the name of retrogression. A reapportionment plan would not be narrowly tailored to the goal of avoiding nonretrogression if the State went beyond what was reasonably necessary to avoid retrogression." *Shaw v. Reno*, 113 S. Ct. at 2831.

[39] The United States's contention that Texas has a compelling governmental interest in "affirmative action redistricting" to remedy past racial discrimination in voting misconstrues this Court's case law as to when race may be used to remedy past racial discrimination. Post-Trial Brief of the United States at 23-24, 80. "Societal discrimination, without more, is too amorphous a basis for imposing a racially classified remedy." *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 276 (1986). In addition, a state must have a " 'strong basis in evidence for [concluding] that remedial action [is] necessary.' " *Shaw v. Reno*, 113 S. Ct. at 2832 (*quoting Croson*, 488 U.S. at 500). Other than a few *post-hoc* rationalizations advanced by counsel at a late stage in the proceedings below, Texas has made no serious attempt to gather or present such evidence. *See Vera*, slip op. at 86 n.53, State App. 71a n.53. This failure is fatal to the United States's claim. Moreover, the Fourteenth Amendment may bar states from doing more than what the Voting Rights Act requires in remedying prior discriminatory voting practices. *See Shaw v. Reno*, 113 S. Ct. at 2832 (noting that in *UJO* "only three justices . . . were prepared to say that States have a significant interest in minimizing the consequences of racial bloc voting apart from the requirements of the Voting Rights Act.") (*quoting UJO*, 430 U.S. at 167-68); *Miller*, 1994 WL 506780 at *23 (a compelling governmental interest in remedying past discriminatory voting practices does not exist independent of the Voting Rights Act); *Shaw v. Hunt*, 861 F. Supp. at 488 (Voorhees, J., concurring in part and dissenting in part) (same).

IV. EVEN IF TEXAS DID HAVE A COMPELLING GOVERNMENTAL INTEREST IN DRAWING DISTRICT LINES DETERMINED BY RACE, TEXAS CANNOT SHOW THAT IT EMPLOYED NARROWLY TAILORED MEANS TO CREATE DISTRICTS 18, 29, AND 30.

Texas clearly failed to use narrowly tailored means in creating CDs 18, 29, and 30. Only if the districts as drawn "have the least possible amount of irregularity in shape" and are consistent with "traditional districting criteria" can a state show that it used narrowly tailored means. *Shaw v. Reno*, 113 S. Ct. at 2832.[40] In addition, "[w]here obvious alternatives to a racially offensive districting scheme exist . . . bizarre districts are not narrowly tailored." *Vera*, slip op. at 89, State App. 74a.

Texas acknowledges that it could have drawn the same number of racially competitive districts as it did in HB 1, with compact and contiguous districts that respected existing political subdivisions and preserved cohesive neighborhood interests. *See, e.g.*, Senator Johnson Plan C500 and Owens-Pate Plan 606 for Dallas County; Owens-Pate Plan 606 and Dr. Weber Plan 676 for Harris County. Had any of these numerous alternative plans been implemented, however, Texas could not have made the districts as racially "safe" as it desired. Texas's refusal to implement these alternative districting plans is sufficient, *in and of itself*, to show that Texas failed to use narrowly tailored means in creating districts 18, 29, and 30.

Moreover, as noted above, CDs 18, 29, and 30 are extraordinarily non-compact and non-contiguous, fail to respect existing political subdivisions, and frustrate if not preclude effective political representation and voter participation. *See* Section II.B(1)-(2), pp. 18-21, *supra*.

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[40] *See also Hays I*, 839 F. Supp. at 1208 (invalidating a "Z"-shaped Louisiana congressional district in part because the district failed to respect traditional districting principles and thus was not narrowly tailored).

Accordingly, Texas cannot show that it employed narrowly tailored means in engaging in racial gerrymandering.

CONCLUSION

For the reasons set forth above, Appellees urge the Court to summarily affirm the judgment below or, alternatively, to affirm such judgment after plenary review.

Respectfully submitted,

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November 30, 1994

APPENDIX A

(From Appendix I of Plaintiffs' Memorandum in Opposition to the Motion for Continuance of the State Defendants, submitted May 18, 1994)

Page 16 ROLL CALL Thursday, October 24, 1991

GERRYMANDER CONTEST WINNERS

After a last-minute flurry of entries in our gerrymander contest for the weirdest-shaped 1992 districts, we've settled on three winners and two honorable mentions. First prize goes to A.J. Pate, a manufacturing company executive in Houston, Texas, who submitted the proposed 30th district of Texas. The second prize winner, who submitted a version of New Mexico's 3rd district, is Bruce Donisthorpe, an aide to Rep. Joe Skeen. And third prize went to Terry Schaff, a staffer on the Merchant Marine and Fisheries Committee, for his map of North Carolina's new 2nd district. All three receive a Rand McNally Illustrated World Atlas ($79.95 value).

Honorable mentions went to Martynas Ycus, a staffer to Rep. Jim McDermott, for his "yin-yang" entry of Texas's new 18th and 29th districts and John Hambel of the Energy and Commerce Committee for New York's proposed 17th district.

[Photos Omitted in Printing]

APPENDIX B

TEXAS CONGRESSIONAL REDISTRICTING HOUSE BILL 1 72ND LEGISLATURE, 2ND CALLED SESSION

NARRATIVE OF VOTING RIGHTS ACT CONSIDERATIONS IN AFFECTED DISTRICTS

September, 1991
Texas Congressional Redistricting Staff

INTRODUCTION

The purpose of this narrative is to describe the Congressional redistricting process and to give an overview of the efforts made to address Voting Rights Act concerns. The redistricting process began in 1990 when outreach hearings were conducted throughout the state. These outreach hearings, which were conducted by the interim Senate Select Committee on Legislative Redistricting and by the House Redistricting Committee, were primarily held in those areas where minorities would be mostly affected and allowed members of the community to express their desires and concerns about the prospective House, Senate and Congressional districts. Additional hearings were held during the Regular Session of the 72nd Legislature.

One of the primary concerns of the minority communities was the purported undercount and the affect that it would have on the legislative and congressional redistricting process. The legislature did make certain adjustments to mitigate the impact of the undercount in drawing legislative districts; however, the one-person, one-vote requirement for congressional districts only allows a slight deviation, if any, from equal populations among the several districts. The proposed Congressional plan successfully achieves absolute equal population among the districts, i.e. zero percent (0%) deviation. Since the Department of Commerce decided not to make an *official* adjustment, no population adjustments were made for the undercount.

The actual "drawing of the lines" of the new Congressional districts was a very long and tedious process which began during the Regular Session of the 72nd Legislature. In the Texas Senate, this process was led by Senator Eddie Bernice Johnson, Chair of the Senate Subcommittee on Congressional Districts and Senator Chet Brooks, Chair of the Senate Committee of the Whole. Representative Tom Uher led the redistricting efforts of the Texas House of Representatives. In designing the minority districts, it was necessary to consider several factors that impact the *actual* voting strength of the minority population. These factors include the total minority population, the voting age minority population, voter registration, voter turnout, and whether the minority group members include non-U.S. citizens or those otherwise not eligible to vote. The ethnic population in each proposed minority district has been carefully analyzed to ensure that members of the protected minority group has a reasonable opportunity to elect a Congressional representative of their choice.

REGIONAL ANALYSIS OF PROPOSED CONGRESSIONAL DISTRICTS

As a result of the 1990 census count, Texas was apportioned three (3) additional Congressional seats. Because of the historical and anticipated population growth patterns, it was agreed that the new districts should be configured in such a way as to allow members of racial, ethnic, and language minorities to elect Congressional representatives. Accordingly, the three new districts include a predominantly black district drawn in the Dallas County area and predominantly Hispanic districts in the Harris County area and in the South Texas region. In addition to creating the three new minority districts, the proposed Congressional redistricting plan increases the black voting strength of the current District 18 (Harris County) by increasing the population to assure that the black community may continue to elect a candidate of its choice. District 18 is currently represented by a black Congressman,

Craig Washington; however, the population has shifted over the last ten years resulting in the current district having only 35.1% total black population and 42.2% total Hispanic population. The newly proposed District 18 contains 50.9% total black population and 15.3% total Hispanic. The Hispanic population that is currently in District 18 has been shifted to the newly proposed Hispanic District 29 which is also in Harris County.

DALLAS AND TARRANT COUNTY MINORITY DISTRICTS

One of the main areas of controversy during the redistricting process was Dallas County. In order to create the new black district in this area, the district lines had to be drastically modified from the current configuration. Under the 1980 Congressional redistricting plan, the population of Dallas County was included in two (2) districts: (1) District 5 included 22.1% total black population and 20.6% total Hispanic population. Under the 1990 census, this district's population was above the ideal population of 566,217 by 41,965 people. (2) District 24 currently includes 29.4% total black population and 21.3% total Hispanic population. Under the 1990 census, this district is overpopulated by 68,920 people. The proposed Congressional plan distributes the population of Dallas County among three (3) districts, including the newly proposed black District 30. The proposed District 30 consists of 50.0% total black population and 17.1% total Hispanic population.

		Current		Proposed	
		Black	Hispanic	Black	Hispanic
District	5	22.1%	20.6%	16.3%	17.9%
	24	29.4%	21.3%	19.1%	21.8%
	30	—	—	50.0%	17.1%

Throughout the course of the Congressional redistricting process, the lines of the proposed District 30 were constantly reconfigured in an attempt to maximize the voting strength for this black community in Dallas County. The

black community leaders were in constant contact with Senator Eddie Bernice Johnson, the Chair of the Senate Subcommittee on Congressional Districts, as well as black Dallas Representatives Fred Blair, Jerald Larry and Sam Hudson. While the legislature was in agreement that a safe black district should be drawn in the Dallas County area, the real dispute involved the composition, configuration and *quality* of that district. The community insisted that a "safe" black district be drawn that had a total black population of at least 50%. The community's demands were supported by the NAACP Voter Education Redistricting Project and the Texas State Coalition of NAACP Branches. Both of these groups submitted resolutions and position papers to each member of the Texas State Legislature.

There were many alternative proposals presented. Although some of these proposals showed a more compact configuration, none of them reached the threshold 50% total black population which the community felt was necessary to assure its ability to elect its own Congressional representative without having to form coalitions with other minority groups. There is little evidence of coalition voting between blacks and Hispanics in Dallas County. In fact, it has been judicially noted that blacks and Hispanics generally do not form political coalitions in voting for public officials in Dallas County. The United States District Court in evaluating the Congressional redistricting plan drawn by the 67th Texas Legislature (1981) discussed the forming of a minority coalition in Dallas County:

> ". . . the defendants group together the black population and Hispanic population into one "minority" category, thereby demonstrating a fundamental insensitivity to the practical reality of minority politics. . . . Coalitions between blacks and Hispanics are certainly part of the political landscape of Texas. . . . Ethnic politics in Dallas, however, has been noteworthy for its lack of a legacy of black-brown coali-

> tions. The testimony at trial indicated that blacks and Hispanics frequently staked out positions quite separate from blacks." *Seamon v. Upham*, 536 F. Supp. 931, 1001 (1982).

The proposed District 30 represents the combined input of black elected officials, black leadership in the Dallas community and other local, state and national minority interest organizations. The goal was to not only create a district that would maximize the opportunity for the black community to elect a Congressional candidate of its choice in 1992, but also one that included some of the major black growth areas which will assure continued electoral and economic opportunities over the next decade. After much analysis, deliberation and negotiation, the legislature was able to successfully meet these goals.

The creation of a safe minority district in Dallas County directly affects districts in Tarrant County and surrounding areas. Under the current Congressional configuration, the Tarrant County population is split between Districts 6, 12, and 26. (Tarrant County is not included in the *current* District 24.) The ethnic composition of the current and proposed districts affecting Tarrant County is as follows:

	Current		Proposed	
	Black	Hispanic	Black	Hispanic
District 6	9.3%	9.1%	4.4%	5.4%
12	16.3%	16.1%	8.0%	16.3%
24	-0-	-0-	19.1%	21.8%
26	6.5%	8.8%	4.2%	9.2%

The following percentages represent the black and Hispanic portions of the Tarrant County population in each district:

	Current		Proposed	
	Black	Hispanic	Black	Hispanic
District 6	4.4%	4.0%	4.9%	5.3%
12	16.3%	16.1%	9.5%	18.8%
24	-0-	-0-	31.2%	12.3%
26	7.8%	7.9%	1.1%	5.1%

Although the overall percentages for minorities declined slightly, this decrease does not constitute retrogression due to the fact that there is a completely new district created in the Dallas-Tarrant County metroplex area in which minorities will have *substantial* electoral impact. The new minority district is the proposed District 30 as described above. The proposed District 30 includes 1,207 blacks and 564 Hispanics from Tarrant County.

The proposed Congressional redistricting plan divides the minority community in the southeast portion of Fort Worth between Districts 12 and 24. District 24 includes 73,446 blacks and 29,009 Hispanics from Tarrant County. Members of the black community expressed concern that the proposed cut dilutes the voting strength of this minority community. The specific cut was adopted from a floor amendment which was offered by Representative Garfield Thompson of Fort Worth. Representative Thompson is the only black House member from Tarrant County and currently represents the majority of this black community. The amendment places his *current* House District into proposed District 24. This amendment was adopted by the Legislature and incorporated into the final proposed Congressional plan.

An analysis of this geographic area demonstrates that even if *all* of the 42,732 Tarrant County blacks that are in the proposed District 12 were combied with the 108,340 total blacks in proposed District 24, the total black population in District 24 would only represent 26.7% of District 24's total population. Clearly, this would not be sufficient population to assure that a black or other minority could be elected from this district. Increasing the total minority percentage from the 19.1% to 26.7% would not guarantee that minorities would have any greater potential for influencing the outcome of an election. In fact, such an increase would likely result in retrogression in that it would eliminate the potential for having an effective swing-vote influence in the adjacent District 12.

HARRIS COUNTY MINORITY DISTRICTS

There were several regional outreach hearings held in the Harris County area. The community expressed their desire to have a new Hispanic district drawn in this area and also raised questions regarding the effect of the undercount. The proposed "safe" minority Districts 18 and 29, as well as the proposed minority impact District 25, are the result of input from the community and from the Harris County elected officials in the Texas Legislature. Throughout the process, modifications were made to increase the percentage of Hispanics in the newly proposed district. The primary spokespersons for the Hispanic community in Harris County were State Representatives Roman Martinez and Mario Gallegos, Houston City Councilman Ben Reyes, Ms. Judith Sanders-Castro of the Mexican-American Legal Defense Fund and Mr. Marc Campos of the Southwest Voter Registration Education Project. Although there was a great deal of controversy concerning the redistricting of the Harris County Senate and House seats, neither the Congressional Subcommittee or its staff was ever presented with any specific proposals or requests regarding the redistricting of Congressional seats. Most of the concerns had been addressed in drawing the House and Senate districts and the appropriate changes were incorporated into the proposed Congressional districts. The proposed configurations of the Harris County districts were reviewed and approved by the legislative representatives from that area.

District 29

This newly created Hispanic district consists of 10.2% total black population and 60.6% total Hispanic population. Several amendments were made during the legislative process to increase the total number of Hispanics to at least 60% of the district's total population. In drawing this district, the legislature considered requests that were made during the regional hearings and that were implemented in the proposed Senate and House districts.

The Hispanic community has not raised objection to the proposed configuration of this new district.

District 18

This district was originally designed to be a predominantly black district and has been represented by notable black leaders such as former Congresswoman Barbara Jordan, the late Congressman Mickey Leland, and current Congressman Craig Washington. The current District 18 is underpopulated by 116,549 people and is made up of 35.1% total black population and 42.2% total Hispanic population. In order to increase the total population to the ideal district size, additional black population was taken from adjacent districts thereby increasing the total black population to 50.9% and decreasing the total Hispanic population to 15.3%. The remaining Hispanic population is included in the new proposed Harris County Hispanic district. These changes result in the maximization of minority voting strength for this geographical area.

EL PASO COUNTY MINORITY DISTRICT

This proposed Congressional District is entirely within El Paso County. There was no opposition to the proposed configuration. The ethnic composition is as follows:

	Current		Proposed	
	Black	Hispanic	Black	Hispanic
District 16	3.6%	68.4%	3.6%	70.4%

SOUTH TEXAS AND BEXAR COUNTY MINORITY DISTRICTS

Due to the dramatic increase in Hispanic growth in this region of the State, it was clear that a new Hispanic seat should be drawn in the South Texas area. The affected districts include Districts 20 (Bexar County), 23, 15, 27 and the newly proposed Hispanic District 28. The drafting of these district lines was spearheaded by Sen-

ator Frank Tejeda, Vice-chair of the Senate Subcommittee on Congressional Districts. Senator Tejeda and his staff were in constant contact with the minority leadership in the South Texas (also known as the Valley) and Bexar County areas. In fact, the drafting of these districts was carefully monitored by representatives of the Mexican-American Legal Defense fund to assure that members of this Hispanic population were not unnecessarily packed in creating the new Hispanic district.

Due to the heavy concentration of Hispanics in these regions, there were no major problems concerning minority voting strength or adjustments of population numbers/percentages. Rather, the controversies were primarily focused on communities of interest disputes involving economic concerns. In fact, during one of the regional hearings in Brownsville, several witnesses testified that there were no racial issues to be considered in drawing districts in the Valley, since Hispanics make up the majority of the population there.

The ethnic composition of the South Texas and Bexar County Districts is as follows:

	Current		Proposed	
	Black	Hispanic	Black	Hispanic
District 20	8.2%	69.7%	5.8%	60.7%
23	5.2%	59.3%	2.9%	62.5%
15	0.5%	76.9%	1.1%	74.5%
27	2.4%	66.7%	2.4%	66.2%
28	—	—	8.5%	60.4%

Texas Senate Subcommittee on
Congressional Districts
Plan C657
8/24/91

POPULATION COMPOSITION OF PROPOSED CONGRESSIONAL DISTRICTS

Congressional District 1 *Jim Chapman (D)*
is composed of the following whole counties: Bowie (81,665), Camp (9,904), Cass (29,982), Delta (4,857), Franklin (7,802), Harrison (57,483), Hopkins (28,833), Lamar (43,949), Marion (9,984), Morris (13,200), Panola (22,035), Red River (14,317), Rusk (43,735), Titus (24,009), Upshur (31,370), Wood (29,380) and the following split counties: Gregg (34,337), Hunt (36,-069), Nacogdoches (43,306).

Congressional District 2 *Charles Wilson (D)*
is composed of the following whole counties: Angelina (69,884), Cherokee (41,049), Grimes (18,828), Hardin (41,320), Houston (21,375), Jasper (31,102), Liberty (52,726), Newton (13,569), Orange (80,509), Polk (30,-687), Sabine (9,586), San Augustine (7,999), San Jacinto (16,372), Shelby (22,034), Trinity (11,445), Tyler (16,646), Walker (50,917) and the following split counties: Montgomery (18,722), Nacogdoches (11,447).

Congressional District 3 *Sam Johnson (R)*
is composed of the following split counties: Collin (135,-633), Dallas (430,584).

Congressional District 4 *Ralph Hall (D)*
is composed of the following whole counties: Fannin (24,804), Grayson (95,021), Rains (6,715), Rockwall (25,604), Van Zandt (37,944) and the following split counties: Collin (47,376), Cooke (30,489), Dallas (8,-811), Denton (34,424), Gregg (70,611), Hunt (28,274), Kaufman (44,728), Smith (111,416).

Congressional District 5 *John Bryant (D)*
is composed of the following whole counties: Anderson (48,024), Freestone (15,818), Henderson (58,543), Leon (12,665), Limestone (20,946), Madison (10,931), Robertson (15,511), and the following split counties: Brazos (20,495), Dallas (315,899), Kaufman (7,492), Smith (39,893).

Congressional District 6 *Joe Barton (R)*
is composed of the following split counties: Dallas (13,-742), Ellis (27,954), Johnson (30,145), Parker (16,-436), Tarrant (477,940).

Congressional District 7 *Bill Archer (R)*
is composed of the following split county: Harris (566,-217).

Congressional District 8 *Jack Fields (R)*
is composed of the following whole county: Washington (26,154) and the following split counties: Austin (15,-616), Brazos (101,367), Harris (255,490), Montgomery (163,479), Waller (4,111).

Congressional District 9 *Jack Brooks (D)*
is composed of the following whole counties: Chambers (20,088), Galveston (217,399), Jefferson (239,397) and the following split counties: Harris (89,333).

Congressional District 10 *J. J. (Jake) Pickle (D)*
is composed of the following split county: Travis (566,-217).

Congressional District 11 *Chet Edwards (D)*
is composed of the following whole counties: Bell (191,-088), Bosque (15,125), Coryell (64,213), Falls (17,-712), Hamilton (7,733), Hill (27,146), Lampasas (13,-521), McLennan (189,123), Milam (22,946), Mills (4,531), San Saba (5,401) and the following split county: McCulloch (7,678).

Congressional Disrtict 12 *Pete Geren (D)*
is composed of the following split county: Johnson (67,020), Parker (48,349), Tarrant (450,848).

Congressional District 13 Bill Sarpalius (D)
is composed of the following whole counties: Archer (7,973), Armstrong (2,021), Baylor (4,385), Briscoe (1,971), Carson (6,576), Castro (9,070), Childress (5,953), Clay (10,024), Collingsworth (3,573), Cottle (2,247), Crosby (7,304), Dickens (2,571), Donley (3,696), Floyd (8,497), Foard (1,794), Garza (5,143), Gray (23,967), Hale (34,671), Hall (3,905), Hardeman (5,283), Hemphill (3,720), Hutchinson (25,689), King (354), Knox (4,837), Lamb (15,072), Lipscomb (3,143), Lynn (6,758), Montague (17,274), Motley (1,532), Potter (97,874), Roberts (1,025), Swisher (8,133), Wheeler (5,879), Wichita (122,378), Wilbarger (15,121) and the following split counties: Cooke (288), Denton (43,705), Lubbock (42,811).

Congressional District 14 Greg Laughlin (D)
is composed of the following whole counties: Aransas (17,892), Bastrop (38,263), Blanco (5,972), Burleson (13,625), Caldwell (26,392), Calhoun (19,053), Colorado (18,383), Fayette (20,095), Gonzales (17,205), Hays (65,614), Jackson (13,039), Lavaca (18,690), Lee (12,854), Maragorda (36,928), Refugio (7,976), Victoria (74,361), Wharton (39,955) and the following split counties: Austin (4,216), Brazoria (59,419), Travis (10,190), Waller (19,279), Williamson (26,816).

Congressional District 15 E. (Kika) De La Garza (D)
is composed of the following whole counties: Bee (25,135), Brooks (8,204), De Witt (18,840), Goliad (5,980), Hidalgo (383,545), Karnes (12,455), Live Oak (9,556), San Patricio (58,749) and the following split counties: Jim Wells (10,266), Kleberg (19,349), Willacy (14,138).

Congressional District 16 Ron Coleman (D)
is composed of the following split county: El Paso (566,217).

Congressional District 17 Charles Stenholm (D)
is composed of the following whole counties: Borden (799), Brown (34,371), Callahan (11,859), Coke (3,424), Coleman (9,710), Comanche (13,381), Concho (3,044), Dawson (14,349), Eastland (18,488), Erath (27,991), Fisher (4,842), Haskell (6,820), Hood (28,981), Howard (32,343), Jack (6,981), Jones (16,490), Kent (1,010), Martin (4,956), Mitchell (8,016), Nolan (16,594), Palo Pinto (25,055), Runnels (11,294), Scurry (18,634), Shackelford (3,316), Somervell (5,360), Stephens (9,010), Stonewall (2,013), Taylor (119,655), Throckmorton (1,880), Wise (34,679), Young (18,126) and the following split county: Tom Green (52,746).

Congressional District 18 Craig Washington (D)
is composed of the following split county: Harris (566,217).

Congressional District 19 Larry Combest (R)
is composed of the following whole counties: Andrews (14,338), Bailey (7,064), Cochran (4,377), Dallam (5,461), Deaf Smith (19,153), Gaines (14,123), Hansford (5,848), Hartley (3,634), Hockley (24,199), Moore (17,865), Ochiltree (9,128), Oldham (2,278), Parmer (9,863), Randall (89,673), Sherman (2,858), Terry (13,218), Yoakum (8,786) and the following split counties: Ector (84,590), Lubbock (179,825), Midland (49,936).

Congressional District 20 Henry B. Gonzales (D)
is composed of the following split county: Bexar (566,217).

Congressional District 21 Lamar Smith (R)
is composed of the following whole counties: Bandera (10,562), Burnet (22,677), Gillespie (17,204), Glasscock (1,447), Irion (1,629), Kendall (14,589), Kerr (36,304), Kimble (4,122), Llano (11,631), Mason (3,423), Menard (2,252), Real (2,412), Schleicher

(2,990), Sterling (1,438) and the following split counties: Bexar (165,040), Comal (38,679), Guadalupe (38,818), McCulloch (1,100), Midland (31,453), Tom Green (45,712), Williamson (112,735).

Congressional District 22 *Tom DeLay (R)*
is composed of the following split counties: Brazoria (132,288), Fort Bend (177,999), Harris (255,930).

Congressional District 23 *Albert Bustamante (D)*
is composed of the following whole counties: Brewster (8,681), Crane (4,652), Crockett (4,078), Culberson (3,407), Dimmit (10,433), Edwards (2,266), Hudspeth (2,915), Jeff Davis (1,946), Kinney (3,119), Loving (107), Maverick (36,378), Medina (27,312), Pecos (14,675), Presidio (6,637), Reagan (4,514), Reeves (15,852), Sutton (4,135), Terrell (1,410), Upton (4,447), Uvalde (23,340), Val Verde (38,721), Ward (13,115), Webb (133,239), Winkler (8,626), Zavala (12,162) and the following split counties: Bexar (95,091), Ector (34,344), El Paso (25,393), Midland (25,222).

Congressional District 24 *Martin Frost (D)*
is composed of the following whole counties: Navarro (39,926) and the following split counties: Dallas (233,888), Ellis (57,213), Tarrant (235,190).

Congressional District 25 *Mike Andrews (D)*
is composed of the following split counties: Fort Bend (47,422), Harris (518,795).

Congressional District 26 *Richard Armey (R)*
is composed of the following split counties: Collin (73,977), Dallas (292,668), Denton (195,396), Tarrant (4,176).

Congressional District 27 *Solomon Ortiz (D)*
is composed of the following whole counties: Cameron (260,120), Kenedy (460), Nueces (291,145) and the following split counties: Kleberg (10,925) and Willacy (3,567).

Congressional District 28 (NEW DISTRICT)
is composed of the following whole counties: Atascosa (30,533), Duval (12,918), Frio (13,472), Jim Hogg (5,109), La Salle (5,254), McMullen (817), Starr (40,518), Wilson (22,650), Zapata (9,279) and the following split counties: Bexar (359,046), Comal (13,153), Guadalupe (26,055), Jim Wells (27,413).

Congressional District 29 (NEW DISTRICT)
is composed of the following split county: Harris (566,217).

Congressional District 30 (NEW DISTRICT)
is composed of the following split county: Collin (7,050), Dallas (557,218), Tarrant (1,949).

APPENDIX C

PLAINTIFFS' EXHIBIT 14K

TABLE 7

AFRICAN-AMERICAN SUCCESS IN TEXAS LEGISLATIVE DISTRICTS BY PERCENT BLACK, 1983-1992

Year	50% +	45-49.9	40-44.9	35-39.9	30-34.9
1983	100% (10)	50% (2)	—	50% (4)	50% (2)
1985	100 (10)	50 (2)	—	50 (4)	50 (2)
1987	100 (9)	100 (3)	—	50 (4)	50 (2)
1989	100 (9)	100 (2)	100 (1)	75 (4)	50 (2)
1991	100 (10)	100 (1)	100 (2)	67 (3)	50 (2)
1983-91	100 (48)	80 (10)	100 (3)	58 (19)	50 (10)

APPENDIX D

(Plaintiffs' Exhibit 8B)

Excerpt from Testimony of Eddie Bernice Johnson from *Terrazas v. Slagle*, heard in the United States District Court for the Southern District of Texas

Dated December 12, 1991

* * * *

[230]

DIRECT EXAMINATION

BY MR. RICHARDS:

Q Could you give us your full name, please?

A My name is Eddie Bernice Johnson—Johnson.

Q And where do you live, Mrs. Johnson?

A I live in Dallas, Texas.

Q And you are a member of the Texas Senate; is that correct?

A I am a member of the Texas Senate.

Q When were you first elected to the Texas Legislature?

A In 1972, I was elected to the House.

Q And that was from the first single member districts that were created in Dallas County in 1972?

A That is correct.

Q And as we talked at lunch, the districts, I guess, were actually drawn by Dan Weiser; is that correct?

A That's correct.

Q You were elected to the Texas Senate in 1986; is that correct?

A Yes.

* * * *

[253] Q You said over and over, "If you can draw a minority district, you must draw a minority district." Did I understand you to say that during the course of these deliberations?

A Yes, sir.

Q So, this then would be an outgrowth of that policy; is that correct?

A Yes, sir.

Q Now, I won't describe it as bacteria but you would say then that this executes that legitimate State interest. Is that correct?

A It—it executes the interest of those voters. See, in my judgment, the Voters Rights Act protects voters—not land, not boundaries—other than the State line. It's not a residential requirement. It clearly states that it protects an individual voter.

Q Right.

A And gerrymandering is permitted, as long as it's to enhance the enfranchisement of the minority voters. And in Texas, it covers both Hispanics and Blacks.

[254] Q So, gerrymandering to draw a minority district is a legitimate State interest; is that correct?

A Yes, sir.

Q And you would say then that this carries out that legitimate State interest; is that correct?

A Yes, sir.

Q Was this—does the same principle apply to the drawing of Senate district lines? If you can draw a minority district, you must? I mean, it's not a tricky question. I'm not trying to fool you.

A Well, yes. That's my interpretation of the Voters Rights Act.

Q So, you would say that the same legitimate State interest applies to the drawing of Senate districts, as it does to the drawing of Congressional districts?

A Yes, sir, except that there are a few rules of Law that are different because of it—the State laws govern the Senate seat, and the U. S. Constitution Voters Rights Act governs the Congressional one.

* * * *

APPENDIX E

Excerpt from Deposition of Kenneth Powers from *Vera v. Richards*, heard in the United States District Court for the Southern District of Texas

Dated April 26, 1994

* * * *

[43] Q. Is this the first time you've ever been involved in a redistricting kind of lawsuit?

A. Yes.

Q. What is it, in particular, peaked your interest at this point, rather than sometime in the past?

A. I don't know. As I've said, I've gained a—more of a political awareness. I knew when we were working on—in the congressional campaign and through my volunteer work that something was wrong because when we'd—people would call and ask for their voting locations, and you'd have to get down to the specific address of the person. You couldn't know, you know, what part of town they lived in or—"Well, if you are south of this point and west of this point, then you are in this district."

[44] We had to go specifically house by house; and, in some cases, the locations are done on an even and odd basis, you know, to me which is telling me one side of the street or the other. Just from that experience, I thought, "This isn't right." These are neighbors that are being—you know, I felt that neighbors ought to be in the same congressional district, so I think when I started hearing people being shifted to new voting locations and having new representatives and a lot of times they were very frustrated. Sometimes they were outraged. And, at that point, that's when—that's, I guess, when my interest was peaked.

Q. Outraged at being put into a different district than the one they had been in, say, for the last ten years or so?

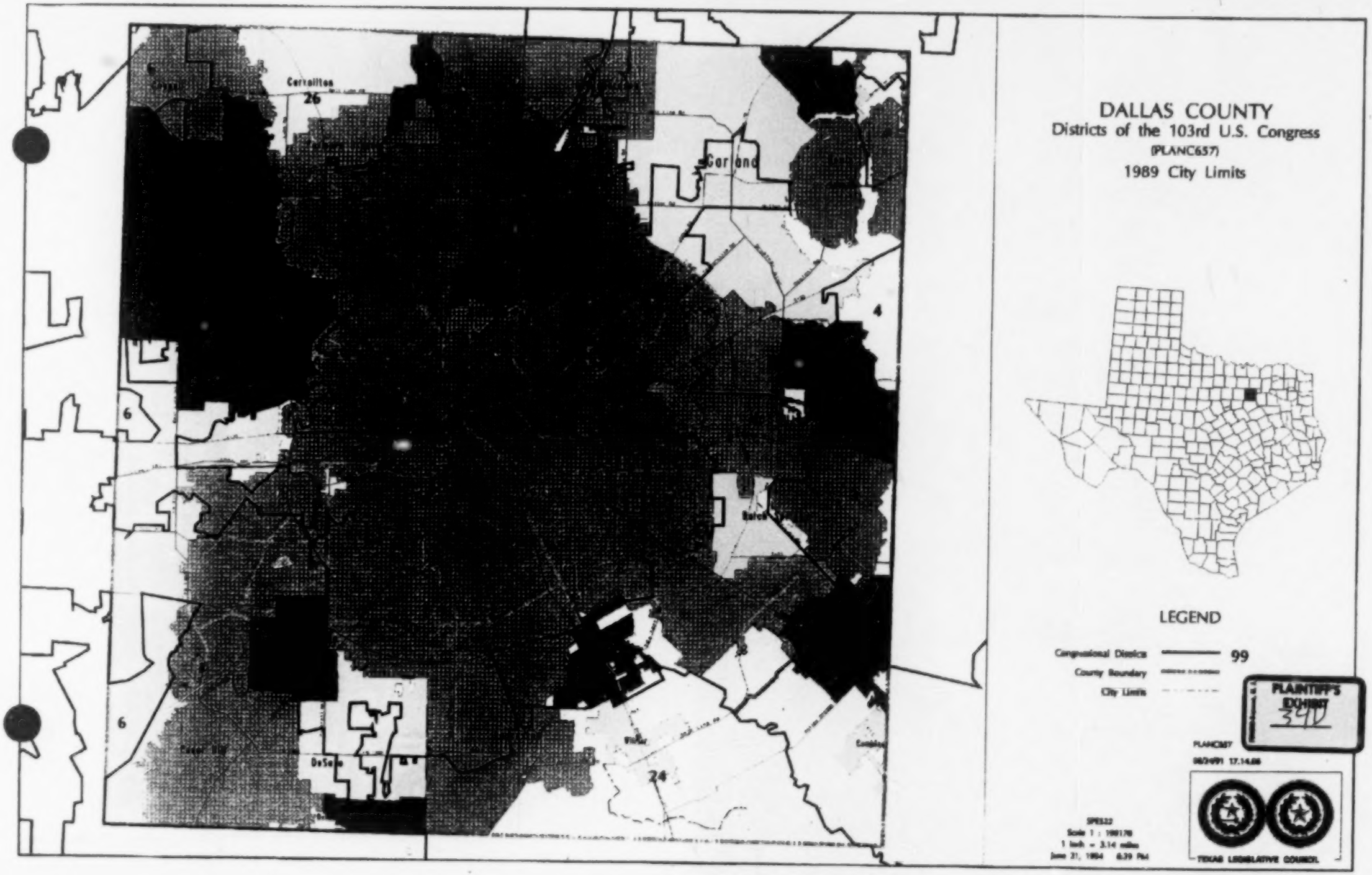
A. Yes. 10, 20, 30 years, yes.

Q. But you understand that that happens every redistricting, don't you? That somebody—some people end up in districts that they weren't in before?

A. Right. But I don't—to my knowledge, in the past, you wouldn't have your next-door neighbor voting in the same place you had voted in for the last 30 years while you have to go, you know, down the street to another polling location. That is what people were outraged at.

* * * *

ATTACHMENT 1



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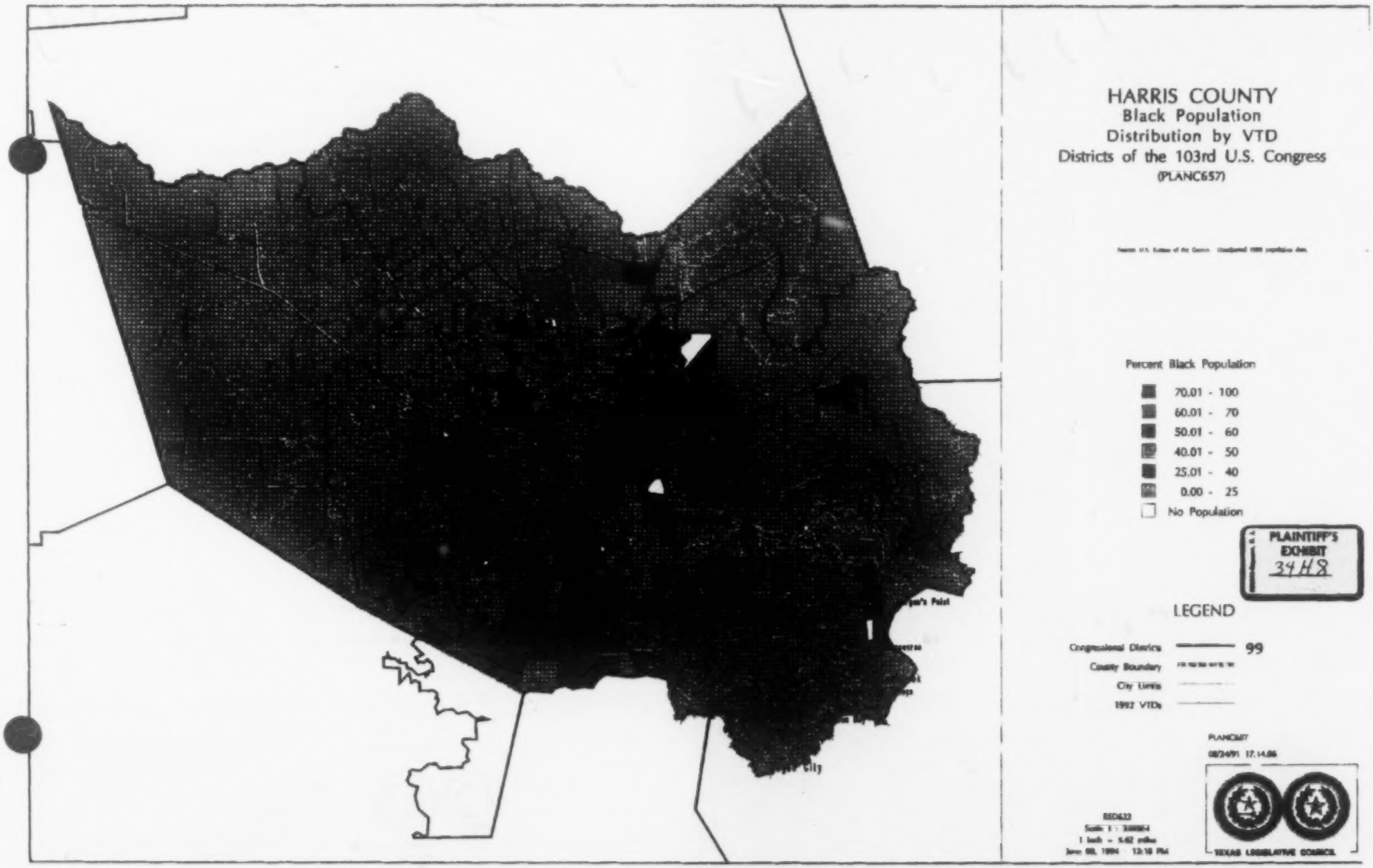
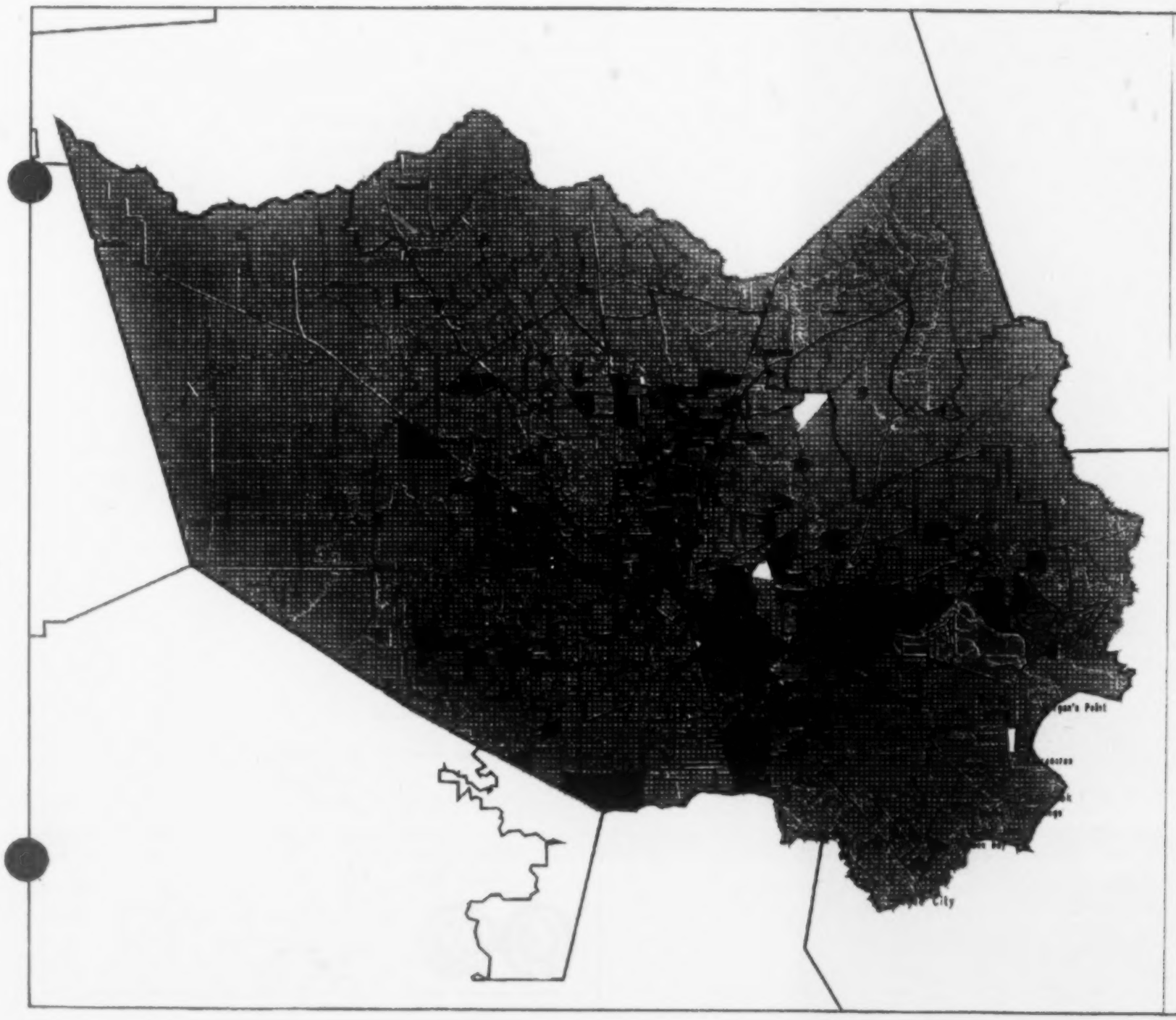

HARRIS COUNTY
Black Population
Distribution by VTD
Districts of the 103rd U.S. Congress
(PLANC657)
Percent Black Population
70.01 - 100
60.01 - 70
50.01 - 60
40.01 - 50
25.01 - 40
0.00 - 25
No Population
PLAINTIFF'S EXHIBIT 34H8
LEGEND
Congressional Districts 99
County Boundary
City Limits
1992 VTDs
PLANC657
08/24/91 17:14:06
TEXAS LEGISLATIVE COUNCIL



HARRIS COUNTY
Hispanic Population
Distribution by VTD
Districts of the 103rd U.S. Congress
(PLANC657)

Percent Hispanic Population

- 70.01 - 100
- 60.01 - 70
- 50.01 - 60
- 40.01 - 50
- 25.01 - 40
- 0.00 - 25
- No Population

PLAINTIFF'S EXHIBIT 349

LEGEND

- Congressional District — 99
- County Boundary
- City Limits
- 1993 VTDs

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1 inch = 5.62 miles
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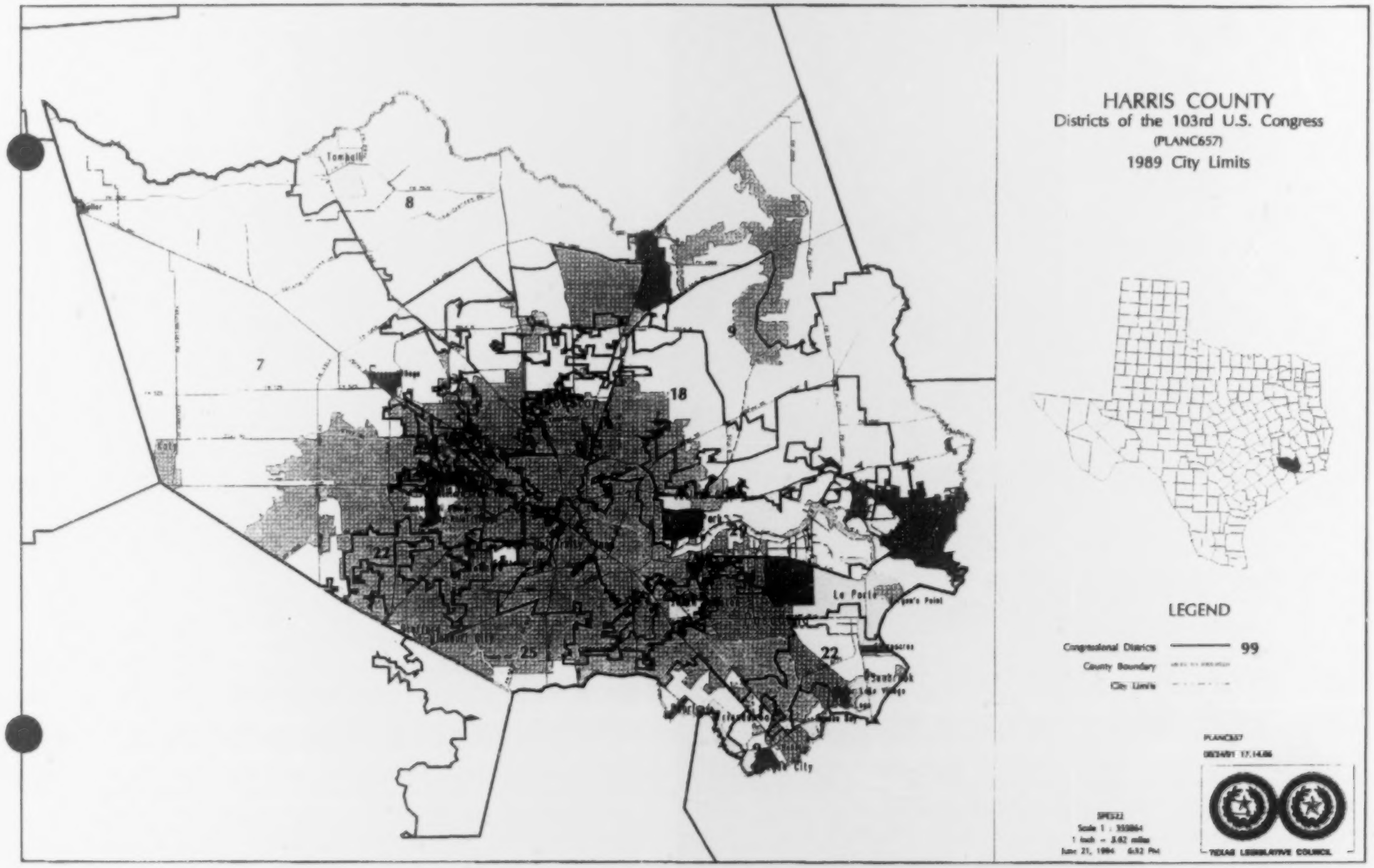
TEXAS LEGISLATIVE COUNCIL


HARRIS COUNTY
Districts of the 103rd U.S. Congress
(PLANC657)
1989 City Limits
LEGEND
Congressional District
99
County Boundary
City Limits
PLANC657
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1 inch = 5.62 miles
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TEXAS LEGISLATIVE COUNCIL
Tomball
Katy
La Porte
Pasadena
Deer Park
Baytown
Pearland
Friendswood
Webster
Seabrook
Kemah
Clear Lake City
Nassau Bay
League City
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Supreme Court, U.S.
FILED
DEC 15 1994
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(H) (3)

Nos. 94-805, 94-806

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

ANN RICHARDS, GOVERNOR OF TEXAS, *et al.*,
Appellants,

v.

AL VERA, *et al.*

REV. WILLIAM LAWSON, *et al.*,
Appellants,

v.

AL VERA, *et al.*

On Appeal from the United States District Court
for the Southern District of Texas

JOINT BRIEF IN OPPOSITION TO MOTION TO AFFIRM

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Nos. 94-805, 94-806

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On Appeal from the United States District Court
for the Southern District of Texas

JOINT BRIEF IN OPPOSITION TO MOTION TO AFFIRM

Introduction

In view of appellees' joinder of our Jurisdictional Statements in the Motion to Affirm, appellants in No. 94-805 (collectively referred to as "the State") and No. 94-806 (collectively referred to as the "Lawson/LULAC Intervenors") file this joint brief in opposition to the Motion to Affirm.

All parties to this appeal agree on one point: the case merits plenary consideration by the Court. This case provides an opportunity for the Court to address important, unresolved issues not raised in other pending appeals, including *Louisiana v. Hays*, which the Court has indicated it will hear on the merits, *appeal pending*, Nos. 94-627, 94-558, Order (Dec. 9, 1994).[1] As stated by appellees, this appeal "presents an appropriate vehicle for the Court to provide useful additional guidance to state legislatures and lower courts." Motion to Affirm at 2. Appellees further state: "This case is unlike ... other [pending cases] in that it involves ... an urban context. Moreover, the State here admittedly rejected more compact alternatives. ... Thus, regardless of whether the Court chooses to review any of the other pending cases, this case presents discrete and important questions concerning the proper application of *Shaw*, and warrants ... plenary review." *Id.* at 13. This unanimity among opposing parties on the value of plenary review strongly supports the conclusion that the Court should note probable jurisdiction.

Argument on the Merits

1. *Inappropriateness of strict scrutiny.* One unique question presented here is whether small, single-urban-area congressional districts, which are the three *least segregated* districts in Texas, fall within the ambit of *Shaw v. Reno*. *Shaw* expressed concern about "an effort to segregate the races for purposes of voting," by joining together "individuals who belong to the same race, but who are *otherwise widely separated by geographical and political boundaries*." 113 S. Ct. 2816, 2824, 2827 (1993) (emphasis added). These localized districts, which unite voters with strong common interests, are not properly subjected to strict scrutiny.

---

[1]The United States has stated its view that this case raises important issues not presented in other cases and that probable jurisdiction should be noted. Jurisdictional Statement, *United States v. Vera*, No. 94-988 (filed December 1, 1994).

Appellees devote approximately half of the Motion to Affirm to proof of the uncontested fact that the State considered race in developing its districting plan. Most of the remainder of the Motion to Affirm is devoted to derogatory descriptions of the shapes of Districts 18, 29 and 30.[2] What appellants have not established is the needed *connection* between the State's race-consciousness in districting and the irregular shapes of the three invalidated districts.

In asserting, without proof, that the shapes of the three challenged districts were caused by a goal of racial segregation, appellees ignore at least two dispositive facts. First, the court below found that alternative, regularly-shaped versions of these districts were possible, but were rejected *because they would have destroyed incumbents' opportunities for re-election*. *E.g.* State J.S. App. 49a (then-Senator Eddie Bernice Johnson's plan opposed by white incumbents, "[w]hile minority voters did not object").

---

[2]Appellees focus enormous effort on an uncontested point -- that congressional districts in Texas are irregularly shaped. The Almanac of American Politics (1994), one of appellees' sources, describes *majority-white* Congressional District 6 as follows: "The 6th is the descendent of a district that stretched across rural territory from Houston to Dallas-Fort Worth, and was represented from 1978 to 1984 by Phil Gramm. ... Its *convoluted* boundaries were drawn by Democrat Martin Frost, but to accommodate Republican Congressman Joe Barton." *Id.* at 1224 (emphasis added). The Almanac also comments on another *majority-white* district: "The 3d Congressional District['s] ... *boundaries are so convoluted as to defy easy description*. ... A narrow corridor connects [affluent north Dallas neighborhoods with] most of the upscale suburbs of Garland and Richardson; from there one salient heads south ... while another heads north. ... Politically, all these areas have one thing in common; they are among the most heavily Republican territory in the U.S." *Id.* at 1217-18 (emphasis added). The Almanac describes the *majority-white* 21st district as follows: "[A]s with so many Texas districts after the 1991 redistricting, its boundaries are quite complex." *Id.* at 1258.

Appellants make a weak effort to argue that the alternative plans were rejected because their minority population percentages were not "safe" enough. The district court made no such finding. The record overflows with evidence, including testimony of appellees' own witnesses,[3] that regularly-shaped, alternative versions of Districts 18, 29 and 30 were rejected because of their significant detrimental impact on incumbents or, in the case of the Martinez plan, their impact on an aspiring white State Senator.

Appellees' claim that the goal of a higher minority population proportion caused irregularities in the shapes of Districts 18, 29 and 30 also is refuted by the existence of regularly-shaped, alternative versions of the these districts with virtually *the same proportions of the protected group*. Trial exhibits show how Districts 18, 29 and 30 each would have looked if racial composition had been the only influence, other than maximizing regularity of shape. State Exs. 12A, 12B, 12C. The Motion to Affirm fails to mention these exhibits.[4]

The second central fact ignored in the Motion to Affirm is the highly irregular shape of numerous *majority-white* congressional districts in Texas. Appellees have abandoned their cross-appeal of the lower court's validation of the *majority-white* districts. Thus, those districts have been finally and specifically adjudicated to be constitutional.

---

[3]*See* Testimony of Representative Kent Grusendorf, TR I-81 ("The driving force for the crazy lines that you find in north Texas are an effort to save Martin Frost." (Frost was a white incumbent.)).

[4]In addition to the hypothetical versions of Districts 18 and 29, which overlap somewhat, other alternative districts in the record show that reasonably compact, non-overlapping versions of these districts, with roughly the same African American and Hispanic population percentages, could have been drawn. For example, State Senate districts in the Houston area, with about the same population as congressional districts, include both an African American and a Hispanic district. *See* State Exs. 16D, 16G.

The irregular shapes of the constitutionally-valid, majority-white districts demonstrate that, despite appellees' derogatory labels, for Texas congressional districts the shapes of Districts 18, 29 and 30 are not "unusua[l]," *Shaw*, 113 S. Ct. at 2820. The lower court described the congressional districting plan, which includes 21 majority-white districts, as "a crazy quilt ... that more closely resembles a Modigliani painting than the work of public-spirited representatives." State J.S. App. 8a. The "crazy quilt" plan chosen by the Legislature establishes that minority opportunity districts are not departures from standard state districting practices and therefore do not raise the "bizarreness" concerns identified by *Shaw v. Reno*.

The irregular shapes of majority-white congressional districts also demonstrate the lengths to which the Legislature was willing to go to protect all incumbents. The majority-white districts provide further proof that incumbent protection, and not race, was the overriding, "but for" cause of *all* the irregular shapes of Texas congressional districts, including Districts 18, 29 and 30.

2. *Compelling state interest*. The court below did not find that the invalidated districts are unsupported by a compelling interest. Nonetheless, appellees contend that the State did not prove the existence of racially polarized voting and thus had no compelling state interest in complying with the Voting Rights Act.

Lay witness testimony, as well as strong evidence presented at trial by experts for both the State and the appellees, established that voting is racially polarized in all three of these congressional districts.[5] Additionally, prior

---

[5]Appellees incorrectly claim that the election of the African American voters' candidates of choice in District 18 shows that "[a] significant number of Anglo voters in Texas support African American and Hispanic candidates." Motion to Affirm at 2. District

(continued...)

to the creation of District 30, the federal court in *Williams v. City of Dallas*, 734 F. Supp. 1317 (N.D. Tex. 1990), had just made extensive, detailed findings of fact on the existence of severe racially polarized voting and other political disadvantages suffered by African American voters in Dallas.

Appellees also contend that a compelling interest is lacking because the shapes of Districts 18, 29 and 30 do not satisfy the compactness requirement of *Thornburg v. Gingles*, 478 U.S. 30 (1986). The shape of the remedial districts actually adopted by the State is irrelevant to the compelling interest issue. The prima facie case under *Gingles* is made with a *hypothetical* district. The law explicitly permits the State to design its own remedial district, which need not conform to the *hypothetical* district used as a tool to evaluate liability. *White v. Weiser*, 412 U.S. 783, 795 (1973); *see also Growe v. Emison*, 113 S.Ct. 1075, 1081 (1993).

3. *Narrow tailoring*. The Motion to Affirm repeats the reasoning of the court below that narrow tailoring requires the State to maximize regularity of district shape, to the exclusion of all other interests determined by the State

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[5](...continued)
18 is a majority-minority district and in the 1970's and 1980's, African Americans and Hispanics voted cohesively. Thus, the success in District 18 does not shed light on Anglo voting patterns.

Appellees rely on the document set out as Appendix C to their Motion to Affirm as proof of significant white cross-over voting. To the best of our knowledge, the basis of this document was never explained at trial and it is not self-explanatory. Without conceding that the information in Appendix C is accurate, it is clear that this document includes elections in which two white candidates ran against each other. Fifth Circuit precedent holds that white-on-white elections should not be used to contradict evidence of racially polarized voting in elections in which a minority candidate is the candidate of choice of the minority voters. *Citizens for a Better Gretna v. City of Gretna*, 834 F.2d 496, 503-04 (5th Cir. 1987), *cert. denied*, 492 U.S. 905 (1989). *See also* PX 13C, at 70.

to be important. The United States' Jurisdictional Statement explains in detail why this interpretation of *Shaw v. Reno* is in error. *See* Jurisdictional Statement, *United States v. Vera*, No. 94-988 at 11-16. *See also* State Jurisdictional Statement at 13-15, 17-19; Lawson/LULAC Jurisdictional Statement at 19-22.

Appellees also claim that the minority population proportions in Districts 18, 29 and 30 are too high and overly safe. Yet, Districts 18 (48.6%) and 30 (47.1%) are both less than 50% in African American voting age population.[6] Although Hispanic residents comprise 55% of District 29's voting age population, in the two elections that have occurred thus far, Hispanic voters have not been able to elect their candidate of choice.[7]

4. *Standing*. Appellees claim that the stigma of race-conscious districting injures them. Motion to Affirm 15. The Court in *Allen v. Wright*, 468 U.S. 737 (1984), rejected such stigmatic harm as inadequate to establish standing. That ruling regarding stigmatic injury and standing should apply to white citizens alleging discriminatory governmental action in districting in the same manner that it applies to African American citizens challenging discriminatory governmental action in education, since both claims arise under the Fourteenth Amendment.

---

[6]Following Fifth Circuit precedent, the State reasonably concluded that a goal of 50% population of a single minority group was required by the Voting Rights Act. *See Brewer v. Ham*, 876 F.2d 448 (5th Cir. 1989).

[7]Since the 1991 redistricting, a white candidate, Congressman Gene Green, has twice won election in District 29. Both times, Green had a Hispanic opponent in the Democratic primary. Analysis of election return data shows that Congressman Green was not the candidate of choice of the majority of Hispanic voters in those races.

Appellees also claim that the irregular shapes of the challenged districts created barriers to their political participation. Harm sufficient to establish standing is a factual matter that must be proved. Neither plaintiffs nor the lower courts may simply *assume*, based on general political theory or preference, that an irregularly-shaped district harms the voters or their relationship to representatives. Indeed, based on an extensive evidentiary record, the District Court for the Eastern District of North Carolina made precisely the opposite finding of fact. *Shaw v. Hunt*, 861 F. Supp. 408, 471 (E.D.N.C. 1994), *appeal pending*, No. 94-923 ("There is no convincing evidence in the record that the irregularities and lack of geographical compactness of these two districts have had or are having any significant adverse effect upon their citizens' interests in fair and effective representation -- in matters either of voting or access to their elected representatives. Indeed, such evidence as there is on the matter preponderates in the other direction.").

Appellees erroneously rely on *Shaw v. Reno* as conclusively establishing harm, as a factual matter, in any case in which a plaintiff challenges race-conscious districting. The opinion in *Shaw* did not hold, *as a matter of nationwide factfinding*, that all members of Congress elected from irregularly-shaped, majority-minority districts will "represent a particular group rather than their constituency as a whole." Motion to Affirm 14 (quoting *Shaw v. Reno*, 113 S. Ct. at 2828). Rather, the Court indicated that such a result is "threaten[ed]." *Id.* The reality of this "threat" still must be proved as a matter of fact in each particular case, both to establish standing and to sustain the merits of a *Shaw* claim. The uncontradicted evidence in this case proves precisely the opposite. For example, even plaintiffs agree that District 18's Congresswoman-elect, Sheila Jackson Lee, "will reach out to white voters and try to

build racial bridges." Thomas Dep. 74.[8] Plaintiffs suffer no harm which this lawsuit will remedy concerning the inclusiveness and responsiveness of minority members of Congress from Texas.

Conclusion

For the reasons stated in the Jurisdictional Statements and herein, the Court should note probable jurisdiction.

Respectfully submitted,

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[8]In one example of appellees' reliance on factual matter not in the record, the Motion quotes a statement allegedly made by District 18's defeated Congressman, Craig Washington. Motion to Affirm at 21. If this statement was made by Congressman Washington, a fact on which the record sheds no light, appellants had no opportunity to conduct cross-examination or to subject this alleged statement to any scrutiny, and it must be disregarded as not part of the factual record before the lower court or this Court. —

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(14) (14) (11)

No. 94-805, 94-806, and 94-988

In the Supreme Court of the United States
OCTOBER TERM, 1995

GEORGE W. BUSH, Governor of Texas, *et al.*,
Appellant-Applicants,

vs.

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Appellee-Respondents.

REV. WILLIAM LAWSON, *et al.*,
and
ROBERT REYES, *et al.*,
Appellants,

vs.

AL VERA, *et al.*,
Appellees.

UNITED STATES OF AMERICA,
Appellants,

vs.

AL VERA, *et al.*
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

JOINT APPENDIX

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Docket Sheet

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

AL VERA, et al., Plaintiffs,	)	
v.	)	C.A. No. H-94-0277
ANN RICHARDS, et al., Defendants,	)	
v.	)	
REV. WILLIAM LAWSON, et al., Defendant-Intervenors,	)	
v.	)	
UNITED STATES OF AMERICA Defendant-Intervenor,	)	
LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC) OF TEXAS, et al., Defendant-Intervenors.	)	

01/26/94	1	COMPLAINT filed; FILING FEE $120.00 RECEIPT # 432949 (1 [Entry date 01/27/94]

01/26/94	1	MOTION |for permanent injunction|, |for declaratory judgment|, and |for preliminary injunction| by Al Vera, et al , |Motion Docket Date 2/15/94 [1-1] motion, 2/15/94 [1-2] motion, 2/15/94 [1-3] motion| , filed. (Part 2 of #1) (la) [Entry date 01/27/94]
01/26/94	2	ORDER FOR CONFERENCE | set pretrial conference for 10:00 5/13/94 before Magistrate Judge Marcia A. Crone|, | set scheduling conference for 10:00 5/13/94 before Magistrate Judge Marcia A. Crone| , entered; Parties notified. (signed by Judge David Hittner) (la) [Entry date 01/27/94]
01/26/94	3	APPLICATION |for Paul Loy Hurd to appear as attorney-in-charge for plaintiffs| by Al Vera, et al , |Motion Docket Date 2/15/94 [3-1] motion| , filed. (la) [Entry date 01/27/94]
01/26/94	---	SUMMONS issued for Ann Richards, Bob Bullock, Dam Morales, Pete Laney, John Hannah Jr (la) [Entry date 01/27/94]
01/31/94	---	**Added for Al Vera, Bill Calhoun, Edward Chen, Pauline Orcutt, Edward Blum, Kenneth Powers, Barbara L Thomas attorney Paul Loy Hurd (la)
01/31/94	4	ORDER granting [3-1] motion for Paul Loy Hurd to appear as attorney-in-charge for plaintiffs , entered; Parties notified.

		(signed by Judge David Hittner) (hs) [Entry date 02/01/94]
02/01/94	5	ORDER CONSTITUTING THREE-JUDGE COURT: This case to be heard exclusively by a three-judge Ct.; Judge Daivd Hittner, Judge Melinda Harmon and Judge Edith H Jones. , entered; Parties notified. (signed by Chief Judge 5th Circ Henry A. Politz) (hs)
02/01/94	6	ORDER , that an original and one copy of all documents in this case, submitted by all attys and other interested parties, be filed and a courtesy copy of all documents shall be delivered to the Chambers of Judge Edith Jones, Judge David Hittner and Judge Melinda Harmon. entered; Parties notified. (signed by Judge David Hittner) (hs)
02/09/94	7	ORDER | set status conference for 10:00 2/22/94|, entered; Parties notified. (signed by Judge David Hittner) (hs) [Entry date 02/10/94]
02/15/94	8	ACKNOWLEDGEMENT OF SERVICE as to John Hannah Jr 2/1/94 filed Answer due on 2/21/94 for John Hannah Jr (ph) [Entry date 02/16/94]
02/22/94	---	**Added party USA (ph) [Entry date 02/26/94]
02/22/94	9	MOTION |for leave to participate as amicus curiae| by USA, |Motion Docket

		Date 3/14/94 [9-1] motion| , filed. (ph) [Entry date 02/26/94]
02/22/94	10	MEMORANDUM OF POINTS AND AUTHORITIES by USA in support of [9-1] motion for leave to participate as amicus curiae , filed (ph) [Entry date 02/26/94]
02/22/94	11	Minute entry: Status Conf held; App: Hirtz, Hurd, Hick, Doyle and Herrera. Cnsl to submit copies of maps Briefsi re Prel Inj to be filed by 2/24/94. |terminated deadlines| Ct Reporter: Perry (hs) [Entry date 02/26/94]
02/24/94	12	MOTION |in limine| by Al Vera et al, |Motion Docket Date 3/16/94 [12-1] motion| , filed. (hs) [Entry date 02/26/94]
02/24/94	13	MEMORANDUM by Al Vera et al in support of [12-1] motion in limine , filed (hs) [Entry date 02/26/94]
02/24/94	14	MOTION |for hrg on preliminary injunction be consolidated with and heard in an expedited hrg | by Al Vera et al, |Motion Docket Date 3/16/94 [14-1] motion| , filed. (hs) [Entry date 02/26/94]
02/24/94	15	MEMORANDUM by Al Vera et al in support of [14-1] motion for hrg on preliminary injunction be consolidated with and heard in an expedited hrg , filed (hs) [Entry date 02/26/94]

02/25/94	16	SUPPLEMENT to [13-1] support memorandum, of [12-1] motion in limine by Al Vera et al , filed. (hs) [Entry date 02/28/94]
03/01/94	---	**Added for USA attorney Steven H Rosenbaum (hs)
03/02/94	17	ORDER denying Pltf's [14-1] motion for hrg on preliminary injunction be consolidated with and heard in an expedited hrg. | Set trial date 10:00 6/28/94|, and | set pretrial conference for 10:00 6/16/94| , entered; Parties notified. (signed by Judge David Hittner) (hs) [Entry date 03/03/94]
03/02/94	18	ORDER granting USA's [9-1] motion for leave to participate as amicus curiae , entered; Parties notified. (signed by David Hittner) (hs) [Entry date 03/03/94]
03/02/94	19	RESPONSE by Ann Richards, Bob Bullock, Dam Morales, Pete Laney, John Hannah Jr in opposition to Pltfs [12-1] motion in limine , filed (ph) [Entry date 03/04/94]
03/02/94	20	RESPONSE by Ann Richards, Bob Bullock, Dam Morales, Pete Laney, John Hannah Jr in opposition to Pltfs [14-1] motion [for hrg on preliminary injunction be consolidated with and heard in an expedited hrg , filed (ph.) [Entry date 03/04/94]

03/14/94	21	ANSWER to Complaint by Ann Richards, Bob Bullock, Dam Morales, Pete Laney, John Hannah Jr (Added attorney Renea Hicks), filed. (ph) [Entry date 03/15/94]
03/23/94	22	ORDER |Defts shall deliver the aforementioned documents to the Chambers of Judge Hittner on or before 4:00 4/6/94 , entered; Parties notified. (signed by Judge David Hittner (hs) [Entry date 03/25/94]
03/23/94	23	Trial Scheduling ORDER: On or before 5/31/94 each party file a detailed trial plan indicating proposed time allotments for each remaining state of the trial. Each party shall file a final trial plan on or before 6/9/94 by 4pm and | set scheduling conference for 10:00 6/16/94| , entered; Parties notified. (signed by Judge David Hittner (hs) [Entry date 03/25/94]
03/25/94	24	ANSWER to Complaint by USA (Added attorney Nancy Herrera), filed. (hs) [Entry date 03/28/94]
03/25/94	25	MOTION |to intervene by United States|, |Motion Docket Date 4/14/94 [25-1] motion| , filed. (hs) [Entry date 03/28/94]
03/25/94	26	MEMORANDUM by United States in support of [25-1] motion to intervene by United States , filed (hs) [Entry date 03/28/94]
03/29/94	27	MOTION |for Penda Hair to appear pro hac vice| by Ann Richards, Bob Bullock,

Dan Morales, Pete Laney, John Hannah Jr, |Motion Docket Date 4/18/94 [27-1] motion| , filed. (ph) [Entry date 03/31/94]

03/29/94 28 MOTION |to intervene as defts | by William Lawson, Zollie Scales Jr, Jew Don Boney, Deloyd Parker, Dewan Perry, Ceasar Clark, |Motion Docket Date 4/18/94 [28-1] motion| , filed. (ph) [Entry date 03/31/94]

03/29/94 29 MEMORANDUM OF POINTS and Authorities by William Lawson, Zollie Scales Jr, Jew Don Boney, Deloyd T Parker, Dewan Perry, Ceasar Clark in support of [28-1] motion to intervene as defts , filed (ph) [Entry date 03/31/94]

03/29/94 30 ANSWER/RESPONSE by William Lawson, Zollie Scales Jr, Jew Don Boney, Deloyd T Parker, Dewan Perry, Ceasar Clark to Pltfs [1-1] motion for permanent injunction, [1-2] motion for declaratory judgment, [1-3] motion for preliminary injunction, and Pltfs [1-1] complaint , filed. (ph) [Entry date 03/31/94]

04/08/94 --- Rec'd one copy of the State o;f Texas's submission for section 5 preclearance of its Congressional redistricting plan, in compliance w/the Ct.'s Order entered on 3/25/94. frwd to CRD. (hs) [Entry date 04/12/94]

04/15/94 31 MOTION |to intervene by League of United Lat| by League of United Lat,

		|Motion Docket Date 5/5/94 [31-1] motion| , filed. (hs) [Entry date 04/18/94]
04/15/94	32	MEMORANDUM by League of United Lat in support of [31-1] motion to intervene by League of United Lat , filed (hs) [Entry date 04/18/94]
04/29/94	33	STIPULATION of dismissal, filed (hs) [Entry date 05/04/94]
05/04/94	34	ORDER denying United States [25-1] motion to intervene by United States; granting William Lawson, Zollie Scales, Jr., Jew Don Boney, Deloyd T Parker, Dewan Perry, and Caesar Clark [28-1] motion to intervene as defts; denying w/o prejudice League of United Latin American Citizens [31-1] motion to intervene by League of United Lat , entered; Parties notified. (signed by Judge David Hittner) (hs) [Entry date 05/05/94]
05/04/94	35	ORDER granting [27-1] motion for Penda Hair to appear pro hac vice , for deft-intervenords Lawson, Scales, Boney, Parker, Perry and Clark. entered; Parties notified. (signed by Judge David Hittner) (hs) [Entry date 05/06/94]
05/09/94	36	MOTION |for continuance of trial until 10/3/94| by Ann Richards et al, |Motion Docket Date 5/29/94 [36-1] motion|, filed. (hs) [Entry date 05/10/94]
05/16/94	37	ORDER , that an original and one copy of all documents in this cause submitted by

all attys and other interested parties shall be filed with the U.S. District Clerk. A |courtesy copy of all documents shall be delivered to the chambers of Judge Edith Jones, U.S. Circuit Judge, Judge David Hittner, U.S. District Judge, and Melinda Harmon, U.S. District Judge. Parties are directed to obtain a receipt indicating delivery of submitted courtesy copies from the Judges' chambers. Failure of attys or other interested parties to comply with this Order will lead to possible sanctions by the Ct. entered; Parties notified. (signed by Judge David Eittner) (hs)

05/12/94 38 MOTION |for reconsideration of [34-1] order|, and |to intervene by United States| by United States, |Motion Docket Date 6/1/94 [38-1] motion, 6/1/94 [38-2] motion| , filed. (oeod 5/17/94) (hs) [Entry date 05/18/94]

05/12/94 39 MEMORANDUM by United State in support of [38-1] motion for reconsideration of [34-1] order, [38-2] motion to intervene by United States , filed (oeod 5/17/94) (hs) [Entry date 05/18/94]

05/16/94 40 MOTION |for reconsideration of [34-1] order| by League of United Lat, |Motion Docket Date 6/5/94 [40-1] motion| , filed. (mis) [Entry date 05/20/94]

05/16/94 41 MEMORANDUM by League of United Lat in support of [40-1] motion for

reconsideration of [34-1] order , filed (mis) [Entry date 05/20/94]

05/20/94 42 ORDER denying Defts [36-1] motion for continuance of trial until 10/3/94 , entered; Parties notified. (signed by Judge David Hittner) (ph.)

04/20/94 43 ORDER granting [38-2] motion to intervene by United States and granting [38-1] motion for reconsideration of [34-1] order entered; Parties notified. The United States is subject to the trial scheduling order and to any other scheduling order. This intervention will not be grounds for a continuance of the trial. (signed by Judge David Hittner (ph) [Entry date 05/20/94]

05/18/94 44 MEMORANDUM by William Lawson, Zollie Scales Jr, Jew Don Boney, Deloyd T Parker, Dewan Perry, Ceasar Clark in support of Defts Motion for Continuance, filed (ph) [Entry date 05/23/94]

05/18/94 45 MEMORANDUM IN RESPONSE by Al Vera, Bill Calhoun, Edward Chen, Pauline Orcutt, Edward Blum, Kenneth Powers, Barbara L Thomas to League of United Latin American's [40-1] motion for reconsideration of [34-1] order , filed. (ph) [Entry date 05/23/94]

05/18/94 46 MEMORANDUM by Al Vera in opposition to the USA's [38-1] motion for expedited reconsideration of [34-1] order re the Motion of the United States For

		Permissive Intervention and Motion of the United States for Intervention of Right, filed (ph) [Entry date 05/23/94]
05/18/94	47	MEMORANDUM by Al Vera, Bill Calhoun, Edward Chen, Pauline Orcutt, Edward Blum, Kenneth Powers, Barbara L Thomas in opposition to State Defts [36-1] motion for continuance of trial until 10/3/94 , filed (with attached appendix) (ph) [Entry date 05/24/94]
05/23/94	48	AMENDED ORDER | reset trial date 10:00 6/27/94|. The pretrial conf in the case is reconfirmed for Thursday, 6/16/94 at 10:00am. , entered; Parties notified. (signed by Judge David Hittner) (hs) [Entry date 05/24/94]
05/23/94	49	ORDER denying League of United American Citizens of Texas [40-1] motion for reconsideration of [34-1] order , entered; Parties notified. (signed by Judge David Hittner) (hs) [Entry date 05/24/94]
05/23/94	50	ORDER , Granting Mtn to add deft intervenors Fred Hofheinz, David Jones and Judy Zimmerman. entered; Parties notified. (signed by Judge David Hittner) (hs) [Entry date 05/24/94]
05/20/94	51	MOTION |to add deft-intervenors| by William Lawson, |Motion Docket Date 6/9/94 [51-1] motion| , filed. (hs) [Entry date 05/25/94]

05/27/94	52	ORDER , Amended Motion of LULAC for Intervention as Deft is GRANTED; the Motion of Individual Applicants for Intervention as Defts with the League of United Latin American Citizens of Texas LULAC. entered; Parties notified. (signed by Judge David Hittner) (hs)
05/24/94	53	MOTION |to intervene by League of United Lat| by Robert Reyes, Angie Garcia, Robert Anguiano, Dalia Robles, Nicolas Dominguez, Oscar T Garcia, Ramiro Gamboa, |Motion Docket Date 6/13/94 [53-1] motion| , filed. (hs) [Entry date 05/27/94]
05/24/94	54	MEMORANDUM by Robert Reyes et al in support of [53-1] motion to intervene by League of United Lat , filed (hs) | [Entry date 05/27/94] |
05/24/94	55	AMENDED MOTION |to expedite reconsideration of mtn of LULAC of Texas for intervention as deft| by League of United Lat, |Motion Docket Date 6/13/94 [55-1] motion| , filed. (hs) [Entry date 05/27/94]
05/24/94	56	MEMORANDUM by League of United Lat in support of [55-1] motion to expedite reconsideration of mtn of LULAC of Texas for intervention as deft , filed (hs) [Entry date 05/27/94]
05/31/94	57	INITIAL TRIAL PLAN listing of witnesses by Robert Reyes , filed. (hs)

05/31/94	58	TRIAL PLAN by United States, filed. (ks) [Entry date 06/03/9
05/31/94	59	PRELIMINARY TRIAL PLAN by State Defts Ann Richards, etal, filed. (ks) [Entry date 06/03/94]
05/31/94	60	PRELIMINARY TRIAL PLAN by of The Lawson Defendant-Intervenors, filed. (ks) [Entry date 06/03/94]
06/03/94	61	ORDER , that the parties be allocated the following total trial time for direct, cross, redirect, and recross examinations, opening statements, mtns, and summation: Pltfs' case is allocated 12.9 total hours. entered; Parties notified. (signed by Judge David Hittner) (hs)
06/01/94	62	Initial Detrailed TRIAL PLAN by Al Vera filed. (hs) [Entry date 06/03/94]
06/02/94	63	INITIAL DETAILED TRIAL PLAN by Al Vera, Edward Chen, Pauline Orcutt, Edward Blum, Kenneth Powers, Barbara L Thomas , filed. (mis) [Entry date 06/06/94]
06/14/94	64	UNOPPOSED MOTION |for Allison M Zieve and Alice L Brown to appear pro hac vice| by Deft Intervenors William Lawson, Zollie Scales Jr, Jew Don Boney, Deloyd T Parker, Dewan Perry, Ceasar Clark, |Motion Docket Date 7/4/94 [64-1] motion|, filed. (ks) [Entry date 06/15/94]

06/13/94	65	MOTION |to bifurcate trial| by Movant United States, |Motion Docket Date 7/3/94 [65-1] motion|, filed. (ks) [Entry date 06/15/94]
06/13/94	66	MEMORANDUM OF POINTS & AUTHORITIES by United States in support of [65-1] motion to bifurcate trial, filed (ks) [Entry date 06/15/94]
06/16/94	67	MEMORANDUM by USA in opposition to [65-1] motion to bifurcate trial , filed (hs)
06/16/94	68	MOTION |for protective order| by Al Vera et al, |Motion Docket Date 7/6/94 [68-1] motion| , filed. (hs)
06/16/94	69	MOTION |in limine| by Al Vera et al, |Motion Docket Date 7/6/94 [69-1] motion| , filed. (hs)
06/16/94	70	Minute entry: Pre-Trial Conf. App: Hurd, Hirtz , Hicks and Cruz, Hume, Sanders-Castro and Reyes. Pltfs to advise Ct as to which districts are not to be included or to supply case law supporting their position. Pltf to give expert witness list to deft 6/18/94, Deft to give expert witness list to pltf, 6/22/94 - Deft to give expert witness list to pltf. Parties to exchange exhibit lists 6/22/94. Parties to exhange exhibit list 6/22/94. Parties to exchange proposed stipulation, with a copy to the Ct. 6/24/94. Parties to exchange exhibits 6/25/94. |terminated deadlines| Ct Reporter: Warner (hs)

06/16/94	71	Specification of those Congressional Districts under Challenge by Al Vera, Edward Chen, Pauline Orcutt, Edward Blum, Kenneth Powers, Barbara L Thomas , filed (hs) [Entry date 06/17/94]
06/17/94	72	STIPULATION of dismissal, filed (hs)
06/17/94	73	ORDER: The [65-1] motion to bifurcate trial is DENIED. | proposed findings of fact and conclusions of law to be filed by 7/15/94.|, | defts expert witness list due for 6/21/94; parties shall exchange exhibits by 6/25/94| , entered; Parties notified. Summation shall be conducted by the parties at the close of evidence at the time of trial. (signed by Judge David Hittner) (ph) [Entry date 06/20/94]
06/17/94	74	ORDER granting Deft's [64-1] motion for Allison M Zieve and Alice L Brown to appear pro hac vice , entered; Parties notified. (signed by Judge David Hittner) (hs) [Entry date 06/20/94]
06/20/94	75	MEMORANDUM by Al Vera et al in support of [68-1] motion for protective order , filed (hs) [Entry date 06/21/94] [Edit date 06/21/94]
06/20/94	76	MOTION |for Stephen Katsurinis to appear pro hac vice| by Al Vera et al, |Motion Docket Date 7/10/94 [76-1] motion| , filed. (hs) [Entry date 06/21/94]

06/20/94	77	Supplemental Specification of Congressional District under challenge of by Al Vera, Edward Chen, Pauline Orcutt, Edward Blum, Kenneth Powers, Barbara L Thomas , filed (hs) [Entry date 06/22/94]
06/23/94	78	ORDER granting Pltfs [76-1] motion for Stephen Katsurinis to appear pro hac vice, entered; Parties notified. (signed Judge David Hittner) (hs) [Entry date 06/24/94]
06/23/94	79	NOTICE of Hearing: | set trial date 6/27/94 before Judge David Hittner| , filed. (hs) [Entry date 06/24/94]
06/24/94	80	PROPOSED STIPULATIONS by Pltfs Al Vera, Bill Calhoun, Edward Chen, Pauline Orcutt, Edward Blum, Kenneth Powers, & Barbara L Thomas, filed. (ks) [Entry date 06/27/94]
06/24/94	81	PROPOSED STIPULATIONS OF THE United States, filed. (ks) [Entry date 06/27/94]
06/24/94	82	Letter MOTION |to intervene by Robbins L Mitchell| by Movant Robbins L Mitchell, |Motion Docket Date 7/14/94 [82-1] motion|, filed (ks) [Entry date 06/27/94]
06/28/94	83	Minute entry: Court Trial - Day 1 held; App: Hurd, Kengle, Reyes,Castro, Hicks, Crews, Bullock, Powers, Thomas, Blum, Chen, Hirtz, Katsurenis and Hard. Opening statements. Pltfs evidence

		begins. Adj until 6/28/94 at 9am. |terminated deadlines| Ct Reporter: Warner (hs)
06/29/94	---	**Added for William Lawson attorney Alice A Brown, Allison M Zieve (hs)
06/28/94	84	Minute entry: Ct Trial - Day 1 Pltfs evidence continues. Adj until 6/29/94 at 9am |terminated deadlines| Ct Reporter: Warner (hs) [Entry date 06/29/94]
06/29/94	85	Minutes of Court Trial - Day 3 before Judge Hittner on 6/29/94: Appearances: (same as Day 1), |terminated deadlines| Ct Reporter: F Warner, Pltf's evidence continues, Pltf rest, Defts evidence begins, filed (ks) [Entry date 07/01/94]
07/01/94	---	Per CRD/DM**Terminated document [69-1] motion in limine-withdrawn (ks)
06/30/94	86	MOTION |for leave to file Memorandum As An Amicus Curiae Pro Se| by Amicus A J Pate, |Motion Docket Date 7/20/94 [86-1] motion|, filed. (ks) [Entry date 07/05/94]
07/01/94	87	STIPULATION OF THE PARTIES re: congressional redistricting, filed (ks) [Entry date 07/06/94]
07/01/94	88	Minutes of Fifth Day Court Trial held before Judge Hittner, Jones & Harmon: Appearances: Same as 1st Day, Ct Reporter: F Warner, Evidence continues and concludes, Exhibits admitted into

evidence - reviewed, Closing Arguments, filed (ks) [Entry date 07/06/94]

07/01/94 89 Revised (6/27) Exhibit list by Pltfs Al Vera, etal, filed (k [Entry date 07/06/94]

07/01/94 90 Final Exhibit list of The United States, filed (ks) [Entry date 07/06/94]

07/01/94 91 Final Revised Exhibit List (29 June 1994) by Deft-Intervenors Reyes, LULAC, filed (ks) [Entry date 07/06/94]

07/01/94 92 Final Revised List of Exhibits and Witnesses of Lawson Deft-Intervenors, filed (ks) [Entry date 07/06/94]

07/01/94 93 State Defts' Final Revised Exhibit List, filed (ks) [Entry date 07/06/94]

07/05/94 94 TRANSCRIPT OF TRIAL PROCEEDINGS held 6/27/94 before Judge Three Judge Panel: The Honorable Edith Jones, US Circuit

Judge, The Honorable David Hittner, US District Judge & The Honorable Melinda Harmon, US District Judge, filed. (1 Vol) (Computer aided transcription) (ks) [Entry date 07/06/94]

06/30/94 95 Minutes of Court Trial - Day 4 held before the Honorable Judge(s) Jones, Hittner & Harmon on 6/30/94: Appearances: Same as Day 1, Defts' evidence continues, Court adjourned until 7/1/94 at 9:00 AM,

|terminated passed deadlines| Ct Reporter: F Warner, filed (ks) [Entry date 07/08/94]

07/08/94 96 DEPOSITIONS of Jeff Archer, Edward Blum, Robert R Brischetto, Ed Chen, Kent Grusendorf, Hon. Eddie Bernice Johnson, Lisa R Handley, Roman Martinez, Dr Susan McManus, Pauline Orcutt, William C Owens, A J Pate, Kenneth Powers, Carl V Reynolds, Christoperh M Sharman, Barbara Thomas, Al Vera, Dan Weiser, and Dr Ronald Weber, filed (Depositions fwd to fileroom in two boxes) (hs) [Entry date 07/11/94]

07/11/94 97 TRANSCRIPT OF PROCEEDINGS of Trial before Three-Judge Panel for dates of 6/28/94 before Judge Jones, Hittner and Harmon (Vol 2) , filed. (Court Rptr: F Warner) (hs)

06/30/94 98 MEMORANDUM by A J Pate as an Amicus Curiae Pro Se , filed. [Entry date 07/11/94]

07/12/94 --- **Terminated document [12-1] motion in limine, [51-1] motion to add deft-intervenors, [53-1] motion to intervene by League of United Lat, [55-1] motion to expedite reconsideration of mtn of LULAC of Texas for intervention as deft, [68-1] motion for protective order, [86-1] motion for leave to file Memorandum As An Amicus Curiae Pro Se, [82-1] motion to intervene by Robbins L Mitchell (hs)

07/13/94 99	TRANSCRIPT OF PROCEEDINGS of Trial before Three-Judge Panel for dates of 6/29/94 (Vol 3) before Judge Jones, Hittern and Harmon , filed. (Court Rptr: Fred Warner) (hs)
07/15/94 100	TRANSCRIPT OF PROCEEDINGS of Trial held 6/30/94 at 9:00 AM before Three Judge Panel The Honorable Edith Jones, US Circuit Judge, The Honorable David Hittner, US District Judge, The Honorable Melinda Harmon, US District Judge, filed. (Court Rptr: Fred Warner) (Vol IV) (ks) [Entry date 07/18/94]
07/15/94 101	POST TRIAL BRIEF by Al Vera et al , filed (hs) [Entry date 07/18/94]
07/18/94 102	STATE'S POST-TRIAL BRIEF by Ann Richards et al , filed (hs)
07/18/94 103	POST-TRIAL BRIEF by William Lawson, filed (hs)
07/18/94 104	POST TRIAL BRIEF by League of United Lat et al , filed (hs)
07/18/94 105	Proposed POST-TRIAL FINDINGS OF FACT AND CONCLUSION OF LAW by United States, League of United Lat, Robert Reyes, Angie Garcia, Robert Anguiano, Dalia Robles, Nicolas Dominguez, Oscar T Garcia, Ramiro Gamboa , filed. (hs) [Entry date 07/19/94]
07/18/94 106	POST-TRIAL BRIEF by USA , filed (hs) [Entry date 07/19/94]

07/21/94 107	TRANSCRIPT OF PROCEEDINGS of Trial before Three-Judge Panel for dates of 7/1/94 before Judge Jones, Hittner and Harmon , filed. (Court Rptr: Fred Warner) (hs)
07/25/94 108	POST-TRIAL BRIEF by William Lawson , filed (hs) [Entry date 07/28/94]
08/03/94 109	SUPPLEMENT to Pltfs' [101-1] trial brief by Al Vera et al , filed. (hs)
08/17/94 110	MEMORANDUM OPINION ORDER, entered. Parties notified. (signed by Judge David Hittner) (hs)
08/26/94 111	State Defts' Submission on Relief, filed (hs)
08/26/94 112	MEMORANDUM by USA regarding appropriate relief , filed. (hs
08/29/94 113	REQUEST |for further relief| by Pltfs Al Vera, Bill Calhoun, Edward Chen, Pauline Orcutt, Edward Blum, Kenneth Powers & Barbara L Thomas, |Motion Docket Date 9/18/94 [113-1] motion|, filed. (ks)
08/26/94 114	MEMORANDUM IN SUPPORT by Pltfs Al Vera, Bill Calhoun Edward Chen, Pauline Orcutt, Edward Blum, Kenneth Powers, Barbara L Thomas of interim remedy providing new congressional elections in the unconstitutional congressional districts, filed (ks) [Entry date 08/29/94]

08/26/94 115	Submission on Relief by William Lawson , filed (hs) [Entry date 08/29/94]
08/26/94 116	RESPONSE by League of United Lat, Robert Reyes, Angie Garcia, Robert Anguiano, Dalia Robles, Nicolas Dominguez, Oscar T Garcia, Ramiro Gamboa to [110-1] order , filed. (hs) [Entry date 08/29/94]
08/26/94 117	APPENDIX to , filed. (hs) [Entry date 08/29/94]
08/26/94 118	APPENDIX "B" , filed. (hs) [Entry date 08/29/94]
04/29/94 ---	Rec'd letter from Congress of the U.S. House of Representatives, Ref- Opinion. fwd to CRD. (hs) [Entry date 08/30/94]
09/02/94 119	ORDER | That the Texas legislature shall develop on or before 3/15/95, a new Congressional redistricting plan in conformity with this Ct's previous opinion| , entered; Parties notified. (signed by Judge David Hittner) (hs)
09/15/94 ---	Rec'd Notice of Appeal, fwd to Appeals. (hs) [Entry date 09/ [Edit date 09/16/94]
09/16/94 120	STATE'S UNOPPOSED EMERGENCY MOTION |to expedite entry of explicit injunction| by John Hannah Jr, Pete Laney, Dan Morales, Bob Bullock, Ann Richards, |Motion Docket Date 10/6/94 [120-1] motion| , filed. (hs)

09/15/94 121 NOTICE OF APPEAL of [110-1] order by Al Vera, Edward Chen, Pauline Orcutt, Edward Blum, Kenneth Powers, Barbara J Thomas , filed. Fee Status: waived (bpw) [Entry date 09/19/94] [Edit date 09/20/94]

09/19/94 --- Notice of appeal and certified copy of docket transmitted to United States Supreme Court: [122-1] appeal (bpw)

09/19/94 123 ORDER granting State's [120-1] motion to expedite entry of explicit injunction. The Ct's Order entered Sept 2/94, is hereby amended nunc pro tunc to provide as additional relief. , entered; Parties notified. (signed by Judge David Hittner) (hs) [Entry date 09/20/94]

09/20/94 124 STATE'S CORRECTED UNOPPOSED MOTION |to expedite entry of explicit injuntion| by John Hannah Jr, Pete Laney, Dan Morales, Bob Bullock, Ann Richards, |Motion Docket Date 10/10/94 [124-1] motion| , filed. (hs) [Entry date 09/21/94]

09/22/94 125 NOTICE OF APPEAL of [119-2] order-paragraph 2, 3, & 5(plus the injunctive provision added by the court's amended order of 9/2/94) by Ann W Richards as the governor, Bob Bullock as LT Governor, James Laney as speaker of the house, Dan Morales as the Atty General, and Ron Kirk as the secretary of Texas, filed. Fee Status: waived (bpw)

09/22/94	---	Notice of appeal and certified copy of docket transmitted to Supreme Court: [125-1] appeal (bpw)
09/23/94	---	**Added for William Lawson attorney Alice L Brown (hs)
09/30/94	126	NOTICE OF APPEAL of [123-1] order, [119-2] order by Robert Reyes, Angie Garcia, Robert Anguiano, Dalia Robles, Nicolas Dominguez, Oscar T Garcia, Ramiro Gamboa, to the SUPREME COURT OF THE UNITED STATES, filed. Fee Status: waived (bpw)
09/30/94	---	Notice of appeal and certified copy of docket transmitted to Supreme Court of The United States: [126-1] appeal (bpw) [Edit date 09/30/94]
09/30/94	127	APPLICATION |for attorney fees| and |reasonable expenses| by Pltfs Al Vera, etal |Motion Docket Date 10/20/94 [127-1] motion, 10/20/94 [127-2] motion|, filed. (ks) [Entry date 10/03/94]
09/30/94	128	NOTICE OF APPEAL of [119-2] order, [110-1] order by Al Vera, Edward Chen, Pauline Orcutt, Edward Blum, Kenneth Powers, and Barbara J Thomas, filed. Fee Status: waived (bpw) [Entry date 10/03/94]
10/03/94	---	Notice of appeal and certified copy of docket transmitted to Supreme Court of the United States: [128-1] appeal (bpw)

10/03/94 129 NOTICE OF APPEAL of [119-2] order William Lawson, Zollie Scales, Jr, Jew Don Boney, Deloyd T Parker, Dewan Perry, Caesar Clark, David Jones, Fred Hofheinz, Judy Zimmerman, filed. Fee Status: waived (bpw)

10/03/94 --- Notice of appeal and certified copy of docket transmitted to The Supreme Court of the United States [129-1] appeal (bpw)

10/03/94 130 NOTICE OF APPEAL of [123-1] order, [119-2] order by United States , filed. Fee Status: waived (bpw) [Entry date 10/04/94]

10/04/94 --- Notice of appeal and certified copy of docket transmitted to Supreme court of the United States: [130-1] appeal (bpw)

10/19/94 --- Per agreement of cnsl - States response to Motion for Attys fees to be filed by close of business on 10/24/94. dm (hs) [Entry date 10/24/94]

10/24/94 131 MOTION |to stay consideration of the application for atty fees|, and | reasonalbe expenses incurred by pltfs| by United States, |Motion Docket Date 11/13/94 [131-1] motion, 11/13/94 [131-2] motion| , filed. (hs) [Entry date 10/25/94]

10/24/94 132 MEMORANDUM by United States in support of [131-1] motion to stay consideration of the application for atty fees, [131-2] motion reasonalbe expenses

incurred by pltfs , filed (hs) [Entry date 10/25/94]

10/24/94 133 RESPONSE by John Hannah Jr, Pete Laney, Dan Morales, Bob Bullock, Ann Richards in opposition to Pltfs' [127-1] motion for attorney fees, [127-2] & expenses, filed (case) [Entry date 10/25/94]

10/24/94 134 RESPONSE by Ann Richards et al, in opposition to Plfts [127-1] motion for attorney fees, and [127-2] motion reasonable expenses , filed (hs) [Entry date 10/25/94]

11/07/94 135 AMENDED NOTICE OF APPEAL of [123-1] order, [119-2] order , filed by the Mexican Am Legal Defense & Educational Fund - on 9/29/94 inadvertantly omitted the name of one Deft-Intervenor the League of United Latin American Citizens. Therefore, this appeal gives notice that deft intervenors League of United Latin Am Citizens, Reyes, Garcia, Anguiano, Robles, Domingues, Garcia, & Gamboa appeal to the US Supreme court, filed. Fee Status: waived (bpw) [Entry date 11/08/94]

11/08/94 --- Notice of Amended appeal and certified copy of docket transmitted to US Supreme Court: [135-1] appeal (bpw)

11/09/94 --- NOTICE of Docketing ROA from Supreme Court Re: [129-1] appeal

NUMBER: 94-806 (bpw) [Entry date 11/10/94]

11/15/94 136 UNOPPOSED MOTION |to extend time to respond to motion to stay consideration of the application for attorney fees and reasonable expenses incurred by pltfs| by Al Vera, Bill Calhoun, et al |Motion Docket Date 12/5/94 [136-1] motion|, filed. (ph) [Entry date 11/16/94]

11/17/94 137 MOTION |to stay pending appeals| by Ann Richards et al, |Motion Docket Date 12/7/94 [137-1] motion| , filed (hs)

11/16/94 138 MOTION |to dismiss notices of appeal| by Al Vera, Barbara L Thomas, Kenneth Powers, Edward Blum, Pauline Orcutt, Edward Chen, |Motion Docket Date 12/6/94 [138-1] motion| , filed. (hs) [Entry date 11/17/94]

11/21/94 139 ORDER denying Defts [137-1] motion to stay pending appeals, entered; Parties notified. (signed by Judge David Hittner (hs)

11/21/94 140 ORDER granting Pltfs [138-1] motion to dismiss notices of appeal , entered; Parties notified. (signed by Judge David) (hs)

11/18/94 141 MEMORANDUM by Al Vera et al in opposition to [131-1] motion to stay consideration of the application for atty fees, and reasonalbe expenses incurred by pltfs , filed (hs) [Entry date 11/21/94] [Edit date 11/23/94]

11/25/94	142	MEMORANDUM by John Hannah Jr, Pete Laney, Dan Morales, Bob Bullock, Ann Richards in opposition to [127-1] motion for attorney fees against the Lawson Intervenors , filed (hs) [Entry date 11/28/94] [Edit date 11/29/94]
11/28/94	---	MAIL RETURNED UNDELIVERABLE as to Robbins L Mitchell re: [140-1] order, [139-1] order , fwd mail to fileroom. (hs)
12/29/94	143	ORDER OF Supreme Court (certified copy) 12/23/94 is stayed pending this courts action on the jurisdictional statement in the above entitled case. If the appeal is dismissed or the judgment of the US Dist Court is affirmed, this order is to terminate automatically. In the event that jurisdiction is noted or postponed, or the judgment is summarily vacated or reversed, this order is to remain in effect pending the sending of the judgment of this Court. , filed. (bpw) [Entry date 01/05/95]
08/17/94	---	**Terminated document [113-1] motion for further relief, [1-1] motion for permanent injunction, [1-2] motion for declaratory judgment, [1-3] motion for preliminary injunction (case) [Entry date 03/07/95]
08/19/94	---	**Terminated document [1-1] motion for permanent injunction, [1-2] motion for declaratory judgment, [1-3] motion for

		preliminary injunction (case) [Entry date 03/07/95]
03/27/95	144	ORDER this case shall be administratively closed; the parties are granted leave to move to reinstate at such time that the parties determine appropriate, entered; Parties notified. (signed by Judge David Hittner) (ck) [Entry date 03/28/95]
03/27/95	---	Case closed (ck) [Entry date 03/28/95]
04/10/95	---	MAIL RETURNED UNDELIVERABLE as to Robbins L Mitchell re: [144-1] order (hs)
07/03/95	---	MAIL RETURNED UNDELIVERABLE (ntice of destruction of trial exhibits) as to Robbins L Mitchell (hs) [Entry date 07/06/95]
07/14/95	145	Receipt for Withdrawal of Exhibits by attorney for by Al Vera et al , filed. (hs) [Entry date 07/17/95]
07/14/95	146	Receipt for Withdrawal of Exhibits by attorney for by League of United Lat , filed. (hs) [Entry date 07/17/95]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

AL VERA,	§	
EDWARD CHEN,	§	
BILL CALHOUN,	§	
PAULINE ORCUTT,	§	
EDWARD BLUM,	§	
KENNETH POWERS,	§	
BARBARA L. THOMAS,	§	
Plaintiffs,	§	
VS.	§	CA NO. H-94-027 7
HON. ANN RICHARDS,	§	
in her official capacity	§	
as Governor of the	§	
State of Texas,	§	
HON. BOB BULLOCK	§	
in his official capacity as	§	
Lt. Governor and President	§	
of the Texas Senate,	§	
HON. DAN MORALES,	§	
in his official capacity as	§	
Attorney General for	§	
the State of Texas,	§	
HON. PETE LANEY,	§	
in his official capacity as	§	
Speaker of the Texas House	§	
of Representatives, and	§	
HON. JOHN HANNAH, Jr.,	§	
in his capacity as Secretary	§	
of State of the State of Texas,	§	
Defendants.	§	

ORIGINAL COMPLAINT FOR PERMANENT INJUNCTION AND DECLARATORY JUDGMENT AND MOTION FOR PRELIMINARY INJUNCTION

COME NOW, Plaintiffs, Al Vera, Edward Chen, Bill Calhoun, Pauline Orcutt, Edward Blum, Kenneth Powers and Barbara L. Thomas ("Plaintiffs"), by and through their attorneys and state the following in support of their Original Complaint:

Introduction

1. This action arises under Article I, Sec. 2 and 4 and Article 4, Sec 2, Clause 1 of the United States Constitution at the Fifth, Fourteenth and Fifteenth Amendments of the United States Constitution and 42 U.S.C. 1973 et seq. (the "Voting Rights Act"). Plaintiffs challenge the constitutionality of the Texas State Legislature's Congressional Redistricting Plan, enacted pursuant to House Bill 1, 72nd Legislature, 2nd Called Session ("Congressional Plan"). Plaintiffs assert that the Congressional Plan as enacted and implemented is gerrymandering based upon race, color, language, and ethnic origin ("racial gerrrymandering") and therefore violates Plaintiffs' equal protection rights as unconstitutional racial gerrymandering. Plaintiffs contend that the Congressional Plan represents an unconstitutional effort to segregate the races for purposes of voting: 1) without regard for traditional districting principles, including compactness, contiguousness, consistency with existing political, economic, societal, governmental or jurisdictional boundaries; 2) without sufficiently compelling justification; and 3) without "narrow tailoring" as required by the United States Constitution. Plaintiffs assert that the Congressional Plan violates the rights of the Plaintiffs, and all citizens of Texas, by violating their rights guaranteed to them by Article 1, Sec 2 and 4 and Article 4, Sec 2, Clause 1 of the United States Constitution of the Fifth, Fourteenth, and Fifteenth Amendments to the United States Constitution.

2. Plaintiffs seek a judgment that: 1) declares the Congressional Plan as enacted and implemented by the Defendants is unconstitutional; 2) enjoins the Defendants from further using the Congressional Plan in the impending

congressional primaries and elections; 3) orders the Texas Legislature to create a new Congressional Plan that conforms with state and federal law and constitutional requirements and which specifically ceases to divide, classify or segregate state residents into voting districts on the basis of race; and 4) provides in the event the Defendants and the legislature of Texas should fail to effectuate a lawful plan within the time restraints necessary to protect the constitutional and legal rights of the Plaintiffs to vote in a competitive and effective congressional election process, the court shall take the action necessary to create and implement a congressional plan in the interim for the Plaintiffs and the people of Texas 5) preliminarily enjoins Defendants from taking any action in preparation for the primary or general elections for the U.S. House of Representatives until a constitutional Congressional Plan is either enacted by the Texas Legislature or imposed by this Honorable Court.

Jurisdiction and Venue

3. This action arises under Article 1, Secs 2 and 4 and Article 4, Sec 2, Clause 1 of the United States Constitution at the Fifth, Fourteenth and Fifteenth Amendments of the United States Constitution, under 42 U.S.C. 1973 et seq. and 2 U.S.C. § 2.

4. This court has original jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), 1361 and 2284.

5. Venue exists under 28 U.S.C. Sec. 1391(b) in that all Defendants reside in the State of Texas and the injuries are sustained by the Plaintiffs in the Southern District of Texas.

Three-Judge District Court

6. Convocation of a three-judge district court is required by 28 U.S.C. § 2284 because this action challenges the constitutionality of the statewide apportionment of congressional districts for the State of Texas.

Parties

7. All of the Plaintiffs are residents and citizens of the State of Texas and are registered to vote. Under the 1991 Congressional Plan adopted in Texas, Plaintiffs Edward Blum, Bill Calhoun and Kenneth Powers vote in the 18th Congressional District, Plaintiff Edward Chen votes in the 25th Congressional District, Plaintiffs Barbara L. Thomas and Al Vera vote in the 29th Congressional District, and Plaintiff Pauline Orcutt votes in the 30th Congressional District.

8. Defendant Ann Richards is the Governor of the State of Texas, and, in such capacity, is the Chief Executive Officer of the State of Texas charged with the duty of enforcing compliance with state legislation under the Constitution of Texas. She is sued in her official capacity.

9. Defendant Bob Bullock is the Lieutenant Governor and President of the Senate of the State of Texas, and in this capacity he presides over the Texas Senate and certifies certain actions of the Senate. He is sued in his official capacity.

10. Dan Morales is the Attorney General of the State of Texas and, in this capacity, he is responsible for enforcement of the laws of the State of Texas. He is sued in his official capacity.

11. Pete Haney is the Speaker of the Texas House of Representatives and, in this capacity he presides over that body and certifies certain actions taken by the House of Representatives. He is sued in his official capacity.

12. John Hannah, Jr. is the Secretary of State of Texas and in this capacity is charged with preparing a certificate of election for each person elected. He is sued in his official capacity.

Adoption of 1992 Congressional Plan

13. Pursuant to the results of the 1980 decennial census, the State of Texas was entitled to twenty-seven (27) members in the United States House of Representatives. Because of a substantial increase in the Texas population in

comparison to the other states of the Union as recorded by the 1990 decennial census, Texas is now entitled to thirty (30) members in the United States House of Representatives.

14. The reapportionment of the size of Texas' Congressional delegation required the State of Texas to redistrict the State into thirty (30) congressional districts, each roughly equal in population. To this end, the legislature enacted redistricting legislation (House Bill 1, 72nd Legislature, Second Called Session) that created thirty (30) districts.

15. The State of Texas is subject to the pre-clearance procedures of Section 5 of the Voting Rights Act. The redistricting legislation could not take effect and was unenforceable unless and until the Attorney General of the United States failed to object to the Congressional Plan within a prescribed time after its submission to him. Following its enactment, the redistricting legislation was duly submitted to the Attorney General for pre-clearance pursuant to the Voting Rights Act. The Attorney General entered no objection to the new redistricting plan. The Defendants have scheduled primary elections for March 8, 1994, and the general election for November 8, 1994.

First Cause of Action

16. Article I, Sec. 2 of the United States Constitution provides that "the House of Representatives shall be composed of members chosen every second year by the people of the several States," Article I, Sec. 4 provides that "times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing (sic) senators." Article 4, Sec. 2 states that, "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." The Fourteen Amendment of the Constitution provides that no State shall "deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction

the equal protection of the law." The Fifth Amendment of the Constitution provides that no one shall "be deprived of life, liberty or property, without due process of law." The Fifteenth Amendment states in Sec. 1 that, "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color or previous condition of servitude."

17. The Plaintiffs are natural persons, and citizens of the State of Texas and, of the United States, registered to vote in Texas, have rights under Article I, Sec. 2 of the U.S. Constitution, which are "liberties" protected by the due process clause of the Fifth and Fourteenth Amendments.

18. One component of due process is equal protection; and equal protection is inconsistent with arbitrary, capricious and unjustified classification of voters on the basis of race, ethnicity or color embodied in the Congressional Plan. The enactment of the Congressional Plan was done by the defendants with the purpose and intent of establishing congressional districts with a pre-ordained racial or ethnic group was selected to be the dominant group, in order to elect a member of that favored group to Congress. The Congressional Plan relies on a series of bizarre geographic configurations which result in congressional districts that divide rural and suburban counties into multiple congressional districts, and in urban counties, split neighborhoods and are not contiguous or rely on rights-of-way and easements to unite otherwise disparate sections of a count into a single congressional district.

19. The intended and actual result of this ethnic gerrymandering was the disenfranchising and diluting of the voting rights of the particular individual voters of a race different from the designated dominant racial group in that particular congressional district. Since the state Congressional Plan comprises one distinct inter-related plan, this unconstitutional intent and result in numerous congressional districts constitutionally taints all congressional districts and therefore the plan as a whole.

20. The erroneous and unconstitutional interpretation and application of the Voting Rights Act by the Defendants, and their enactment of the Congressional Plan evidences Defendants' intent, purpose and ultimate result of disenfranchising or diluting the effectiveness of the electorial franchise of certain individual voters of particular racial groups within the various congressional districts comprising the state Congressional Plan.

21. The effect of the acts of the Defendants and other persons acting on behalf of the State of Texas is to isolate a large number of black and Hispanic persons into certain congressional districts designated as "white majority" districts separate and apart from the black and Hispanic voters segregated in the congressional districts of the State designated as either "black majority" districts or "Hispanic majority" districts.

22. The effect of the acts of the Defendants and other persons acting on behalf of the State of Texas is to isolate a large number of white and black persons into certain congressional districts designated as "Hispanic majority" districts separate and apart from the black and white voters segregated in the congressional districts of the State designated as either "black majority" districts or "white majority" districts.

23. The effect of the acts of the Defendants and other persons acting on behalf of the State of Texas is to isolate a large number of white and Hispanic persons into certain congressional districts designated as "black majority" districts separate and apart from the white and Hispanic voters specifically placed in the congressional districts of the State designated as "white majority" districts or "Hispanic majority" districts.

24. Plaintiffs believe that the Congressional Plan was enacted by the Defendants based upon an interpretation that the Voting Rights Act requires Texas to create "electorally safe" congressional districts dominated by a designated racial majority to control the elections therein to assure the results

of the election of members of Congress from those districts that are identical to the dominating racial majority designated by the Defendants in the district. The interpretation of the Voting Rights Act and the enactment of the Congressional Plan was intended to and in fact has the effect of intentionally disenfranchising or diluting the rights of the voters of the designated minority roles in each district by the designated dominant race.

25. This interpretation by Defendants violates the clear and unambiguous language of 42 U.S.C. Sec. 1973(b) which provides "... that nothing in (section 1973) establishes a right to have members of a protected class elected in numbers equal to their proportion in the population"; and therefore, the creation of the Congressional Plan is neither authorized, required nor permitted by the Voting Rights Acts. Additionally, the Congressional Plan by creating racially safe electoral districts violates the requirement that all races have an opportunity to elect a candidate of choice in every district.

26. The erroneous interpretation of the Voting Rights Act by the Defendants has resulted in a Congressional Plan founded in the most blatant, obvious and constitutionally repugnant racial gerrymandering as has occurred in the nation perpetrated by the threat, express or implicit, by the United States Justice Department to disapprove any redistricting plan which did not conform to this interpretation of the Voting Rights Act. The intentional racial gerrymandering has resulted in the adoption of the Congressional Plan by the State Legislative Defendants which has resulted in the creation of numerous racial districts which are devoid of any commonality of interests within the district such as geographic compactness, contiguousness, consistency with existing political, societal, governmental or economic districts or jurisdictional boundaries, other than the racial designation of the majority therein.

27. By interpreting the Voting Rights Act to require the creation of racially identified and electorally safe

districts, which usually insure the election of members of Congress of the racial majority designated for the district, the Defendants violated (a) the statutory provision of 42 U.S.C. Sec. 1973(b), but also the intent of Article I, Sec. 2 of the Constitution, which does not authorize or contemplate or permit the creation of a system of proportional representation by race in the United States House of Representatives, and the intent of Article I, Sec. 4 of the Constitution, which by implication denied the Congress, or the persons reportedly acting pursuant to Federal Legislation, the authority to impose such a system upon the "people" of any state in their selection of members of the House of Representatives.

28. Acting on their erroneous interpretation of the Voting Rights Act and beyond any authority conferred on them by the Act, Defendants have created innumerable unwieldy districts which embody a scheme for segregation of voters by race in order to meet racial or ethnic quotas for representation of the State of Texas in the United States House of Representatives. By so doing, Defendants have deprived the Plaintiffs and the other citizens of Texas, of the "privileges and immunities of citizens in the several States," which include the privilege of voting in elections for the House of Representatives in districts which have not been drawn or created with respect to race and which are not racially safe, the privilege of choosing a representative without being limited in that choice by the decision of any government official that the person to be elected must be of a certain designated race, and an immunity from any action by the United States or the State of Texas and their respective officers, agents or employees which shall impose racial quotas on the Texas Congressional Delegation to the House of Representatives itself.

29. By their actions and their enforcement of an erroneous interpretation of the Voting Rights Act, Defendants have abridged the rights of the Plaintiffs and all other citizens and registered voters of Texas—whether Hispanic, black, white, native American or others—to

participate in a process for electing members of the House of Representatives which is not racially segregative, or electorally racially safe, but to the contrary is color-blind and the right to vote is not limited or abridged on account of the designated race or color of the majority of the voters placed in the designated districts.

30. The unconstitutional creation of districts sought by Defendants, premised on their misinterpretation of the Voting Rights Act, is not a permissible act, even as a remedial act nor is it justified by its furthering of a compelling governmental interest, and if so enacted, the plan is not narrowly tailored to minimize its repugnant and offensive use of race. Any disparity that may occur between the percentage of members of any particular race who are citizens or registered voters of the State of Texas, and the percentage of persons of the same race who are elected members of the House of Representatives from Texas cannot be mandated legally under the Civil Rights Act (42 U.S.C. 1981, et seq.), of the Voting Rights Act is constitutional under the Fifth, Fourteenth or Fifteenth Amendments.

31. Each Plaintiff, regardless of that person's race or color, has standing to object to the Congressional Plan.

32. The Plaintiffs are citizens and residents of the State of Texas, are part of its "people"; and as registered voters in the State of Texas, they have, under Article I, Sec. 2 of the Constitution, a right to choose members of the United States House of Representatives. Under Article I, Sec. 4, this right is subject to control by Congress only to a limited extent and not in the manner in which Defendants have interpreted the Voting Rights Act.

33. The right of the Plaintiffs to vote for members of the House of Representatives is a right as to which Plaintiffs are entitled to "the equal protection of the law," with respect to any action taken by the State of Texas. Moreover, this right to vote for members of the House of Representatives of the United States is a "privilege" of citizens of the United States within the meaning of the Fourteen Amendment and is

protected by that amendment from being abridged by the State of Texas. The right of the Plaintiffs as citizens of the United States to vote for members of the House of Representatives is also protected by the Fifteenth Amendment against being "abridged" by the State of Texas on account of the race or color of the Plaintiffs.

34. Any action by officers of the State of Texas which discriminates on the basis of race or color violates this right to vote for members of Congress, denies the Plaintiffs and all other voters equal protection of the laws and, on account of the voter's race, color, ethnicity, language or other suspect classification abridges their right to vote.

35. In enacting the Congressional Plan, the Defendants, Officers of the State of Texas, aided and abetted by the United States Justice Department have segregated voters by race, color, language, ethnicity and national origin. The Defendants have designated certain congressional districts, or "minority districts" in which they have ensured a sufficient concentration of voters of a particular race or ethnicity in order to ensure the election to Congress. Defendants actions in that regard constitute blatant racial and ethnic discrimination in violation of the Constitution of the United States.

36. By their actions in enacting and implementing the Congressional Plan, the Defendants have heretofore violated or unless enjoined, will be in the immediate future inevitably violating, rights conferred upon these Plaintiffs by Article I, Secs. 2 and 4, and by the Fifth, Fourteenth and Fifteenth Amendments of the United States Constitution, and in violation of the specific requirements of the Voting Rights Act.

37. The decision by the Legislature of the State of Texas to create certain congressional districts in which a majority of black voters are concentrated and to create certain congressional districts in which a majority of Hispanic voters are concentrated was arbitrary, invidious and without regard to other legitimate state considerations, such

as compactness, contiguousness, geographical boundaries or political subdivisions, and was a decision made with full awareness of the intended consequences and effects of the designation of specific racial majorities for each district. These consequences and effects were to segregate by race the citizens of Texas to create congressional districts along racial lines to assure that white, black or Hispanic members of Congress would be elected from the designated congressional districts.

38. Plaintiffs allege that, for purposes of the Fourteenth and Fifteenth Amendments to the United States Constitution, the intent and purpose on the part of the Defendants and the Legislature of Texas to create "minority districts" was and is an unconstitutional racial gerrymander, discriminatory on its face, regardless of the individual legislator's motives.

39. Plaintiffs represent that they have no adequate or speedy remedy at law to prevent the unlawful and unconstitutional acts of the Defendants from causing the Petitioners and the citizens and registered voters of the State of Texas irreparable harm in the conducting and implementing of the Congressional Plan in violation of the Voting Rights Act and the Fifth, Fourteenth and Fifteenth Amendments to the Constitution of the United States and that the Petitioners and the citizens and registered voters of the State of Texas will continue to suffer such irreparable harm and damage unless and until this Honorable Court grants in this action a preliminary injunction against the Defendants and their respective officers, agents, employees, successors, attorneys and other persons under their direction and control, enjoining them, during the pendency of this action, or until further order of this Court from taking any actions in preparation for or in implementing elections under the Congressional Plan, including specifically taking any actions to allow persons to qualify as candidates for election to the United States House of Representatives in the congressional districts established by the Congressional Plan

or to conduct any election in conjunction therewith until the Legislature of the State of Texas enacts, and the Department of Justice pre-clears a new congressional redistricting plan that possesses other reasonable commonalities of interest of the persons included in the various districts, including compactness, contiguousness, consistency with existing geographic, political and jurisdictional communities of interest, as well as social, economic and cultural commonalities of interest other than race. Pending final hearing and determination of this action and at the conclusion of these proceedings, the Petitioners request a permanent injunction in the form and substance of the preliminary injunction requested above.

WHEREFORE, Plaintiffs respectfully pray that the Defendants be served with this complaint with citation instructing them to respond hereto and after due proceedings that:

1. The United States District Court Judge to whom this case is initially assigned, immediately notify the Chief Judge for the United States Court of Appeals for the Fifth Circuit so that a three-judge Court may be convened to hear this case in as expeditious a manner as feasible;

2. The Court permanently enjoin the Defendants from imposing, directly or indirectly, any requirement that any congressional district in the State of Texas have a majority population of persons of any particular race or color, and also that the Court enjoin Defendants from taking any action, whether under the Voting Rights Act, or otherwise, to establish, or to encourage or require establishment of, a redistricting plan whereunder persons of a particular race or color—whether black, white or Hispanic, native American or otherwise—would be concentrated in a congressional district that does not otherwise possess other reasonable commonalities of interest including compactness, contiguousness, consistency with existing geographic,

political and jurisdictional communities of interest, as well as social, economic and cultural commonalities of interest;

3. The Court determine and declare that the Defendants have illegally and unconstitutionally misinterpreted and misapplied the Voting Rights Act, and especially 42 U.S.C. 1973, and that this Act does not require, authorize or permit the Defendants of the Texas State Legislature to create congressional districts with the legislative intent, purpose or effect of designating for each district an electorally dominate majority of voters of a particular race with the intent, purpose or effect that a specific district will elect a member of Congress of the district's designated race; and, in the altenatives in the event that the Voting Rights Act does not require, permit or authorize a State legislature to create congressional districts with such an intent or purposes to that extent and in that regard, the Voting Rights Act is unconstitutional; or alternatively if the Voting Rights Act does require, permit or authorize a State legislature to create congressional districts with such an intent or purpose, to that extent and in that regard the Voting Rights Act is unconstitutionally applied when the resulting Congressional Plan creates congressional districts devoid of any commonalities of interest other than racial designation of the majority of voters herein and providing for the electoral dominance of the designated race within the district.

4. The Court declare the present Congressional Plan to be illegal and unconstitutional and of no further force and effect as it purports to establish congressional districts for the State of Texas.

5. That the Court direct the Legislature to prepare a new redistricting plan for the State of Texas which does not intentionally concentrate or segregate into any congressional district persons of a particular race or color, whether Hispanic, black, white, native American, which includes within all districts other legitimate commonalities of interest among the voters within the designated districts, and should the Defendants and the legislature of Texas be unable to

effectuate a lawful plan within the time restraints necessary to create said Congressional Plan, Plaintiffs would request that the Court implement an interim plan which meets the aforementioned constitutional requirements.

6. That upon the enactment by the Legislature of new redistricting plan, the new redistricting plan shall be submitted forthwith to the Attorney General. for pre-clearance and that he shall act promptly without requiring, directly or indirectly, the concentration in a congressional district of persons of a particular race or color—whether black, Hispanic, white, native American, or otherwise—in a manner that is devoid of other reasonable commonalities of interest between the voters of the designated districts, and thereafter be reviewed by this Honorable Court for compliance with the requirements of this Court.

7. Petitioners hereby move that the Court grant a preliminary injunction, under the authority of the Federal Rules of Civil Procedure Rule 65(a), enjoining the Defendants, and their respective officers, agents, employees, successors, attorneys and other persons under their direction and control, enjoining them, during the pendency of this action, or until further order of this Court from taking any actions in preparation for or in implementing the Congressional Plan, including specifically taking any actions to allow persons to qualify as candidates for election to the United States House of Representatives in the congressional districts established by the Congressional Plan or to conduct any election in conjunction therewith until the Legislature of the State of Texas enacts, and the Department of Justice pre-clears a new congressional redistricting plan that includes within all districts other reasonable commonalities of interests, including compactness, contiguousness, consistency with existing geographic, political and jurisdictional communities of interest among those voters included in each congressional district.

8. The Court permanently enjoin the Defendants from taking any action in preparation for primary or general

elections for the U. S. House of Representatives in Texas until the Legislature enacts, and the Department of Justice pre-clears, a new redistricting plan as prayed for in paragraphs 5 and 6 above, enjoining the Defendants, and their respective officers, agents, employees, successors, attorneys and other persons under their direction and control, enjoining them from taking any actions in preparation for or in implementing the new Congressional Plan, including specifically taking any actions to allow persons to qualify as candidates for election to the United States House of Representatives in the congressional districts established by the Congressional Plan or to conduct any election in conjunction herewith until the Legislature of the State of Texas enacts, and the Department of Justice pre-clears, a new congressional redistricting plan that includes within all districts reasonable commonalities of interest, such as compactness, contiguousness, consistency with existing geographic, political and jurisdictional communities of interest, as well as social, economic and cultural commonalties of interest among those voters included in each congressional district other than race.

9. That for purposes of consideration of any injunctive relief, this complaint, when properly verified, be treated as an affidavit in this action.

10. That the Court award costs and attorneys' fees, including expert witness fees, to Plaintiffs as against Defendants and against the United States pursuant to the Equal Access to Justice Act, 28 U.S.C. Sec. 2412, or as otherwise authorized by law.

11. That the Court grant such other and further relief as may, to the Court, seem just and proper.

State Defendants' Answer
from *Vera v. Richards*, heard in the United States District for the Southern District of Texas

Dated March 11, 1994

The official-capacity state defendants -- the Governor, Lieutenant Governor, Speaker of the House, Attorney General, and Secretary of State of Texas (collectively, "the state") -- answer as follows to the plaintiffs' Original Complaint for Permanent Injunction and Declaratory Judgment and Motion for Preliminary Injunction ("Complaint"):

1. The state denies the averments in the first sentence of ¶ 1 of the Complaint, except insofar as the averment is made that the action arises under the Fourteenth Amendment to the United States Constitution. The state, without admitting the validity of the claim, admits that the plaintiffs' effort is to bring their claim under the Fourteenth Amendment. The state admits the averment in the second sentence of ¶ 1 of the Complaint. The remainder of ¶ 1 of the Complaint is a recitation of contentions being made by the plaintiffs; the state admits that such contentions are being made but denies that they have legal or factual validity.

2. The state admits the averments of ¶ 2 of the Complaint insofar as they are taken as a mere recitation of the relief being sought by the plaintiffs; to the extent those averments are construed otherwise, the state denies their validity.

3. The state denies the averments in ¶ 3 of the Complaint, except insofar as the averment is made that the action arises under the Fourteenth Amendment to the United States Constitution. The state, without admitting the validity of the claim, admits that the plaintiffs' effort is to bring their claim under the Fourteenth Amendment.

4. The state admits that 28 U.S.C. §§ 1331 and 1343(3) appear to confer jurisdiction upon this Court and that 28 U.S.C. § 2284 makes the convening of a three-judge Court appropriate; otherwise, the state denies the averments in ¶ 4 of the Complaint.

5. The state denies the averments in ¶ 5 of the Complaint insofar as they constitute assertions that any of the official-capacity defendants reside within the Southern District of Texas. The state admits that some part of the injuries which the plaintiffs allege they have sustained as a result of the challenged actions occurred within the Southern District of Texas, although the state does not admit either that those alleged injuries were sustained or that, if they were sustained, they would be sufficient to make venue appropriate under 28 U.S.C. § 1391(b)(2).

6. The state admits the averment in ¶ 6 of the Complaint.

7. The state is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in ¶ 7 of the Complaint.

8. The state admits the averments in ¶¶ 8-11 of the Complaint, except the averment about the duty of the Governor, which insufficiently specific to admit or deny and which, in any event, is a matter of law to which a specific admission or denial is not required.

9. The state admits the averments in ¶ 12 of the Complaint, except insofar as they identify the current holder of the position of Secretary of State. John Hannah, Jr., resigned that position shortly before the preparation of this Answer.

10. The state admits the averments in ¶¶ 13-15 of the Complaint.

11. The state admits the averments in ¶ 16 of the Complaint insofar as they provide a reasonably accurate statement of parts of the cited provisions.

12. The state admits the averments of ¶ 17 of the Complaint insofar as they allege that persons are entitled to

vote for representatives to the United States House of Representatives and that, in connection with doing so, they cannot be denied the equal protection of the laws; otherwise, the state is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in ¶ 17 of the Complaint.

13. The state admits the averment in ¶ 18 of the Complaint insofar as it alleges that equal protection is a component of due process under the Fifth Amendment to the United States Constitution; otherwise, the state denies the averments in ¶ 18 of the Complaint.

14. The state denies the averments in ¶¶ 19-30 of the Complaint.

15. The state is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in ¶ 31 of the Complaint.

16. The state is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in the first sentence of ¶ 32 of the Complaint; otherwise, as to that sentence, the state admits that persons who are citizens and residents of the state, and registered to vote there, have a right to vote for members of the United States House of Representatives. The state denies the averments in the second sentence of ¶ 32 of the Complaint and would further point out that congressional power affecting the conduct of elections to the United States House of Representatives derives from other sources than Article I, § 4, of the United States Constitution, including the source provided by section 5 of the Fourteenth Amendment and section 2 of the Fifteenth Amendment.

17. The state generally admits the averments in ¶ 33 of the Complaint, but is without knowledge or information sufficient to form a belief as to the truth or falsity of any averment that the plaintiffs are the type of eligible voter assumed in the averments. The state, based-on governing law, further denies this Court can adjudicate the

privileges and immunities aspect of the Fourteenth Amendment in the context of the allegations in this action.

18. The state admits the averments in ¶ 34 of the Complaint insofar as they are taken to claim that a state denial of equal protection of the laws in connection with elections to Congress as a general proposition are redressable in the federal courts; otherwise, the state denies the averments in ¶ 34 of the Complaint.

19. The state denies the averments in ¶¶ 35-39 of the Complaint.

20. The state denies that the plaintiffs are entitled to any of the relief sought in the prayer, subparts 1-11 of their Complaint, except for the convening of a three-judge Court as sought in subpart 1 of the prayer. The state further would show that this Court already has denied a preliminary injunction through an Order entered on March 2, 1994.

Affirmative defenses

21. The state avers that the equitable doctrine of laches prevents the plaintiffs from obtaining any of the relief which they request until the next round of congressional redistricting following the next decennial census.

22. The state avers that the doctrines of res judicata and collateral estoppel deriving from the final judgment in *Terrazas v. Slagle*, Civ. Action No. A-91-CA-428, prevent the plaintiffs from obtaining all or some of the relief they seek through this action.

Answer of the United States
from *Vera v. Richards*, heard in the United States District
for the Southern District of Texas

Dated March 25, 1994

The United States of America answers the complaint filed in the above-styled case as follows:

1. No response is required to the first sentence of paragraph 1 because it does not contain allegations of fact. The United States admits the allegations in the second sentence of paragraph 1. The United States admits that plaintiffs are making the assertions in the remainder of paragraph 1, but denies the underlying allegations of those assertions.

2. No response is required to paragraph 2 because it does not contain allegations of fact. The United States denies, however, that plaintiffs are entitled to any relief in this action.

3. No response is required to paragraph 3 because it does not contain allegations of fact.

4. In response to the allegations contained in paragraph 4, the United States admits that this Court has original jurisdiction of this action pursuant to 28 U.S.C. 1331 and 1334(a)(3). The United States avers that 28 U.S.C. 2284 does not confer jurisdiction, but rather requires the convening of a three-judge court to hear this action. The United States denies the allegations contained in the remainder of paragraph 4.

5. The United States admits that all Defendants reside in the State of Texas. The United States lacks knowledge or information sufficient to form a belief as to truth of the remaining factual allegations contained in paragraph 5.

6. The United States admits the allegations contained in paragraph 6.

7. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7.

8. The United States admits the allegations contained in paragraph 8.

9. The United States admits the allegations contained in paragraph 9.

10. The United States admits the allegations contained in paragraph 10.

11. The United States admits the allegations contained in paragraph 11.

12. The United States admits the allegations contained in paragraph 12, subject to the clarification that John Hannah, Jr. no longer serves as the Secretary of State of Texas, having resigned from that position since the complaint was filed.

13. The United States admits the allegations contained in paragraph 13.

14. The United States admits the allegations contained in paragraph 14.

15. The United States admits the allegations contained in paragraph 15, subject to the clarification that the redistricting legislation could have taken effect and would have been enforceable had the State of Texas obtained a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. Clark v. Roemer, 111 S. Ct. 2096 (1992).

16. No response is required to paragraph 16 because it does not contain allegations of fact.

17. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations of fact contained in paragraph 17.

18. No response is required to the first sentence of paragraph 18 because it does not contain allegations of fact.

The United States denies the allegations contained in the remainder of paragraph 18.

19. The United States denies the allegations contained in the first sentence of paragraph 19. No response is required to the second sentence of paragraph 19 because it does not contain allegations of fact.

20. The United States denies the allegations contained in paragraph 20.

21. The United States denies the allegations contained in paragraph 21.

22. The United States denies the allegations contained in paragraph 22.

23. The United States denies the allegations contained in paragraph 23.

24. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 24. The United States denies the allegations contained in the second sentence of paragraph 24.

25. The United States denies the allegations contained in paragraph 25.

26. The United States denies the allegations contained in paragraph 26.

27. The United States denies the allegations contained in paragraph 27.

28. The United States denies the allegations contained in paragraph 28.

29. The United States denies the allegations contained in paragraph 29.

30. The United States denies the allegations contained in paragraph 30.

31. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31.

32. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentance of paragraph 32.

No response is required to the second sentence of paragraph 32 because it does not contain allegations of fact.

33. No response is required to paragraph 33 because it does not contain allegations of fact.

34. No response is required to paragraph 34 because it does not contain allegations of fact.

35. The United States denies the allegations contained in paragraph 35.

36. No response is required to paragraph 36 because it does not contain allegations of fact.

37. The United States denies the allegations contained in paragraph 37.

38. No response is required to paragraph 38 because it does not contain allegations of fact.

39. No response is required to paragraph 39 because it does not contain allegations of fact. The United States denies, however, that plaintiffs are entitled to any relief in this action.

In response to the plaintiffs' prayer for relief, the United States admits that this case should be heard by a three-judge court pursuant to 28 U.S.C. 2284(a). The United States denies that plaintiffs are entitled to any relief in this action.

Lawson Defendant-Intervenors' Answer in Intervention from *Vera v. Richards*, heard in the United States District for the Southern District of Texas

Dated March 28, 1994

Comes now the defendant-intervenors, Rev. William Lawson, Zollie Scales, Jr., Rev. Jew Don Boney, Deloyd T. Parker, Dewan Perry and Rev. Caesar Clark, by and through their undersigned attorneys, and offer the following answers to the Original Complaint For Permanent Injunction and Declaratory Judgment and Motion for Preliminary Injunction:

1. Defendant-intervenors admit that plaintiffs have brought suit challenging the Texas State Legislature's Congressional Redistricting Plan, as set forth in paragraph 1. Defendant-intervenors deny the substance of plaintiffs' challenge and specifically deny that the Congressional Plan violates any constitutional rights of any plaintiff as alleged in paragraph 1.

2. Defendant-intervenors admit that plaintiffs herein seek a judgment as set forth in paragraph 2. Defendant-intervenors deny that plaintiffs are entitled to such a judgment.

3. Defendant-intervenors admit that plaintiffs purport to bring this action under the statutes and constitutional provisions set forth in paragraph 3. Except as expressly admitted, defendant-intervenors deny the averments in paragraph 3.

4. Defendant-intervenors admit that plaintiffs have pled the correct jurisdictional statutes.

5. Defendant-intervenors admit that, on information and belief, all named defendants reside in the State of Texas. Defendant-intervenors deny that plaintiffs have sustained any injuries.

6. Defendant-intervenors admit that a three-judge court is required under 28 U.S.C. § 2284.

7. Defendant-intervenors are without sufficient knowledge to admit or deny the averments in paragraph 7.

8. Defendant-intervenors admit that Ann Richards is the Governor of Texas and state that they are without sufficient knowledge to admit or deny the averment concerning her duty.

9. Defendant-intervenors admit the averments in paragraph 9.

10. Defendant-intervenors admit the averments in paragraph 10.

11. Defendant-intervenors admit the averments in paragraph 11.

12. On information and belief, defendant-intervenors deny that John Hannah, Jr. is the Secretary of State of Texas. Defendant-intervenors admit the remaining averments in paragraph 12.

13. Defendant-intervenors admit the averments in paragraph 13.

14. Defendant-intervenors admit the averments in paragraph 14.

15. Defendant-intervenors deny the averment in paragraph 15, to the extent that it states redistricting legislation was unenforceable "unless and until" the Attorney General failed to act. A change that affects voting in a covered jurisdiction under Section 5 of the Voting Rights Act may also take effect following an affirmative grant of preclearance by the Attorney General or a declaratory judgment determination by the District Court of the District of Columbia.

16. Defendant-intervenors admit the averments in paragraph 16.

17. Defendant-intervenors are without sufficient knowledge to admit or deny the averments in paragraph 17. Defendant-intervenors admit that United States citizens registered to vote in Texas have rights under the United

States Constitution, protected by the due process clause of the Fifth and Fourteenth Amendments.

18. Defendant-intervenors admit that one component of due process is equal protection and that equal protection is inconsistent with invidious racial discrimination. Except as expressly admitted, defendant-intervenors deny the averments in paragraph 18.

19. Defendant-intervenors deny the averments in paragraph 19.

20. Defendant-intervenors deny the averments in paragraph 20.

21. Defendant-intervenors deny the averments in paragraph 21.

22. Defendant-intervenors deny the averments in paragraph 22.

23. Defendant-intervenors deny the averments in paragraph 23.

24. Defendant-intervenors deny the averments in paragraph 24.

25. Defendant-intervenors deny the averments in paragraph 25.

26. Defendant-intervenors deny the averments in paragraph 26.

27. Defendant-intervenors deny the averments in paragraph 27.

28. Defendant-intervenors deny the averments in paragraph 28.

29. Defendant-intervenors deny the averments in paragraph 29.

30. Defendant-intervenors deny the averments in the first sentence of paragraph 30. Defendant-intervenors do not understand the meaning of the second sentence of paragraph 30 and, therefore, they lack sufficient knowledge to admit or deny the averments contained in second sentence of paragraph 30.

31. Defendant-intervenors deny the averments in paragraph 31.

32. Defendant-intervenors are without sufficient knowledge to admit or deny the averments in the first sentence of paragraph 32. To the extent the first sentence in paragraph 32 avers that registered voters in Texas have a right to vote in elections to choose members of the United States House of Representatives, defendant-intervenors admit that averment. Except as expressly admitted herein, defendant-intervenors deny the averments in paragraph 32.

33. Defendant-intervenors deny the averments in paragraph 33 to the extent that paragraph 33 implies that defendants or the State of Texas have abridged the right to vote of plaintiffs herein. Defendant-intervenors are without sufficient information to admit or deny the averments in paragraph 33 to the extent the averments purport to state or describe the voting status or eligibility of plaintiffs.

34. Defendant-intervenors deny the averments in paragraph 34.

35. Defendant-intervenors deny the averments in paragraph 35.

36. Defendant-intervenors deny the averments in paragraph 36.

37. Defendant-intervenors deny the averments in paragraph 37.

38. Defendant-intervenors deny the averments in paragraph 38.

39. Defendant-intervenors admit that plaintiffs request a permanent injunction in this case. Except as expressly admitted herein, defendant-intervenors deny the averments in paragraph 39.

WHEREFORE, Intervenors pray that the Court dismiss the instant action and grant intervenors their taxable costs in this action.

Answer in Intervention of League of United Latin American Citizens (LULAC) of Texas from *Vera v. Richards*, heard in the United States District for the Southern District of Texas

Dated April 14, 1994

The Defendant-Intervenor, League of United Latin American Citizens (LULAC) of Texas (hereinafter LULAC of Texas), by and through its undersigned attorneys offers the following answers to the Original Complaint for Permanent Injunction and Declaratory Judgment and Motion for Preliminary Injunction.

1. Defendant-Intervenor admits that plaintiffs have brought suit challenging the Texas State Legislature's Congressional Redistricting Plan, as set forth in paragraph 1. Defendant-Intervenor denies the substance of plaintiffs' challenge and specifically denies that the Congressional Plan violates any constitutional rights of any plaintiff as alleged in paragraph 1.

2. Defendant-Intervenor admits that plaintiffs herein seek a judgment as set forth in paragraph 2. Defendant-Intervenor denies that plaintiffs are entitled to such a judgment.

3. Defendant-Intervenor admits that plaintiffs purport to bring this action under the statutes and constitutional provisions set forth in paragraph 3. Except as expressly admitted, defendant-intervenor denies the averments in paragraph 3.

4. Defendant-Intervenor admits that plaintiffs have pled the correct jurisdictional statutes as set out in paragraph 4.

5. Defendant-Intervenor admits that, based on information and belief, all named defendants reside in the State of Texas. Defendant-Intervenor denies that plaintiffs has sustained any injuries.

6. Defendant-Intervenor agrees with the assertion in paragraph 6 that a three-judge court is required under 28 U.S.C. § 2284.

7. Defendant-Intervenor is without sufficient knowledge to admit or deny the averments in paragraph 7.

8. Defendant-Intervenor admits that Ann Richards is the Governor of Texas and state that they are without sufficient knowledge to admit or deny the averment concerning her duty.

9. Defendant-Intervenor admits the averments in paragraph 9, 10, and 11.

10. On information and belief, Defendant-Intervenor denies that John Hannah, Jr. is the Secretary of State of Texas. Defendant-Intervenor admits the remaining averments in paragraph 12.

11. Defendant-Intervenor admits the averments in paragraphs 13 and 14.

12. Defendant-Intervenor denies the averment in paragraph 15, to the extent that it states redistricting legislation was unenforceable "unless and until" the Attorney General failed to act. A change that affects voting in a covered jurisdiction under Section 5 of the Voting Rights Act may also take effect following an affirmative grant of preclearance by the Attorney General or a declaratory judgment determination by the District Court of the District of Columbia.

13. Defendant-Intervenor admits the averments in paragraph 16.

14. Defendant-Intervenor is without sufficient knowledge to admit or deny the averments in paragraph 17. Defendant-Intervenor admits that United States citizens registered to vote in Texas have rights under the United States Constitution, protected by the due process clause of the Fifth and Fourteenth Amendments.

15. Defendant-Intervenor admits that one component of due process is equal protection and that equal protection is inconsistent with invidious racial

discrimination. Except as expressly admitted, Defendant-Intervenor denies the averments in paragraph 18.

16. Defendant-Intervenor denies the averments in paragraph 19.

17. Defendant-Intervenor denies the averments in paragraph 20.

18. Defendant-Intervenor denies the averments in paragraph 21.

19. Defendant-Intervenor denies the averments in paragraph 22.

20. Defendant-Intervenor denies the averments in paragraph 23.

21. Defendant-Intervenor denies the averments in paragraph 24.

22. Defendant-Intervenor denies the averments in paragraph 25.

23. Defendant-Intervenor denies the averments in paragraph 26.

24. Defendant-Intervenor denies the averments in paragraph 27.

25. Defendant-Intervenor denies the averments in paragraph 28.

26. Defendant-Intervenor denies the averments in paragraph 29.

27. Defendant-Intervenor denies the averments in the first sentence of paragraph (____). Defendant-Intervenor does not understand the meaning of the second sentence of paragraph ____ and, therefore, lack sufficient knowledge to admit or deny the averments contained in second sentence of paragraph ____.

28. Defendant-Intervenor denies the averments in paragraph 31.

29. Defendant-Intervenor is without sufficient knowledge to admit or deny the averments in the first sentence of paragraph 32. To the extent the first sentence in paragraph 32 avers that registered voters in Texas have a right to vote in elections to choose members of the United

States House of Representatives, Defendant-Intervenor admits that averment. Except as expressly admitted herein, Defendant-Intervenor denies the averments in paragraph 32.

30. Defendant-Intervenor denies the averments in paragraph 33 to the extent that paragraph 33 implies that Defendants or the State of Texas have abridged the right to vote of Plaintiffs herein, Defendant-Intervenor is without sufficient information to admit or deny the averments in paragraph 33 to the extent the averments purport to state or describe the Voting status or eligibility of plaintiffs.

31. Defendant-Intervenor denies the averments in paragraph 34.

32. Defendant-Intervenor denies the averments in paragraph 35.

33. Defendant-Intervenor denies the averments in paragraph 36.

34. Defendant-Intervenor denies the averments in paragraph 37.

35. Defendant-Intervenor denies the averments in paragraph 38.

36. Defendant-Intervenor admits that plaintiffs request a permanent injunction in this case. Except as expressly admitted herein, Defendant-Intervenor denies the averments in paragraph 39.

WHEREFORE, Intervenor prays that the Court dismiss the instant action and grant Intervenors their taxable costs in this action.

Plaintiffs' Specification of Those Congressional Districts Under Challenge from *Vera v. Richards*, heard in the United States District Court for the Southern District of Texas

Dated June 16, 1994

The Plaintiffs herein, Al Vera, Edward Chen, Pauline Orcutt, Edward Blum, Kenneth Powers, and Barbara L. Thomas, do hereby represent that the following Congressional Districts of the 1992 Texas congressional districting plan are specifically challenged based upon the creation of the districts in an attempt to allocate the citizens within the districts by race and ethnicity. The districts under challenge will be identified based upon the cause of action asserted against the construction of the particular district, reserving as a separate and distinct factual consideration for the Court the pattern and practice of racial allocation between districts.

1.

The Equal Protection Clause of the Fourteenth Amendment as articulated in Shaw v. Reno. This cause of action relies heavily on the bizarre, non-traditional construction of the districts, the systematic division of counties, cities, voting precincts, identifiable neighborhoods to provide circumstantial evidence to buttress other evidence that the district is a "racial gerrymander" without compelling governmental interest under the cited authority and its predecessors cited therein. Of the thirty districts in existence, all of the districts violate the principles set forth in Shaw except the following districts -- District 1, 2, 10, 11, 14, 15, 16, 17, 20 and 27.

2.

The Equal Protection Clause of the Fourteenth Amendment. The Plaintiffs assert that it is violative of the Equal Protection clause as articulated in Hays v. Louisiana

for the State Defendants to use race to construct congressional districts which segregate the residents of certain counties, cities and voting precincts by race to allocate the various racial groups into specific districts, in violation of the communities of interest of the segregated locales, in furtherance of a scheme to protect the then existing incumbents, without compelling governmental interests. Of the thirty districts in existence all of the districts are violative of this cause of action, as articulated in Hays, except the following district - 10, 11, 16, 17, 20 and 27.

3.

Section 2 of the Voting Rights Act. While the Plaintiffs assert that the doctrine of collateral estoppel does not prevent this Honorable Court from adjudicating its rights under this statute, in the interest of judicial economy and to narrow the factual and legal issues before this Honorable Court, the Plaintiffs hereby dismiss, without prejudice, their claims under Section 2 of the Voting Rights Act.

4.

State Constitutional Claims. With respect to the claims asserted by the Plaintiffs alleging violations of the constitution of the State of Texas, and other Texas statutory violations, the Plaintiffs hereby dismiss, without prejudice, their claims under said State constitutional and legal provisions.

5.

Therefore, with respect to the Congressional Districts listed in paragraph 2 above, Plaintiffs do not contend that these districts are violative of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, except as they are residual components of a plan otherwise unconstitutional. Additionally, Districts 1, 2, 14, and 15 are challenged under the Equal Protection Clause as non-bizarre products of racial gerrymandering to effectuate the non-compelling governmental interest of incumbent protection.

Stipulations of the Parties
from *Vera v. Richards*, heard in the United States District for the Southern District of Texas

Dated June 30, 1994

COME NOW the parties, and stipulate as follows for the purposes of the proceedings:

1. The parties may introduce into evidence copies of pleadings and the transcripts of testimony from the case of Terrazas v. Slagle, Civ. Action No. A-91-CA-428, Federal District Court for the Western District of Texas, Austin Division, relating to congressional redistricting, subject to objections as to relevancy and materiality.

2. The parties may introduce into evidence any maps, census data, voting data, and any other non-confidential or nonprivileged reports generated by, or with the use of, the state's redistricting computer, mapping and database system. These documents are admissable without authentication provided that they clearly reflect that they are a product of that system.

3. Subject to leave of the Court, to limit the time of live testimony of witnesses, deposition testimony of those witnesses may be introduced into evidence after their testimony is given. The parties will designate only non-duplicative portions of those depositions. The parties may designate and introduce portions of depositions of other witnesses, regardless of the availability of the witness

The Legislature

4. The Texas Legislature consists of the Senate and the House of Representatives.

5. The Texas Senate has 31 members, elected from single member districts.

6. The Texas House of Representatives has 150 members, elected from single-member districts.

Demographics

7. According to the 1980 Census, Texas' total population was 14,229,191, of whom 2,985,824 (20.98 percent) were Hispanic, 1,692,542 (11.89 percent) were non-Hispanic black and 9,350,297 (65.7 percent) were Anglo.

8. According to the 1990 Census, Texas' total population had increased to 16,986,510, of whom 4,339,905 (22.55 percent) were Hispanic, 1,976,360 (11.63 percent) were non-Hispanic black and 10,291,680 (60.59 percent) were Anglo. The increase in population from 1980 to 1990 (2,757,319 persons) entitled Texas to three additional seats in the United States House of Representatives, increasing the size of the delegation from 27 to 30.

9. According to the 1980 Census, Texas' voting-age population was 9,923,085 of whom 1,756,971 (17.71 percent) were Hispanic, 1,095,836 (11.04 percent) were non-Hispanic black and 6,932,894 (69.87 percent) were Anglo.

10. According to the 1990 Census, Texas' voting-age population had increased to 12,150,671 of whom 2,719,586 (22.38 percent) were Hispanic, 1,336,688 (11.0 percent) were non-Hispanic black and 7,828,352 (64.43 percent) were Anglo.

11. According to the 1990 Census, the Hispanic population in the state grew from 1980 to 1990 by 1,354,081 persons, or 45.4 percent, the black population in the state grew from 1980 to 1990 by 283,818 persons, or 16.8 percent, and the Anglo population in the state grew from 1980 to 1990 by 941,383 persons, or 10.1 percent. The growth in Hispanic population accounted for 49.1 percent of the increase in Texas' total population from 1980 to 1990.

12. The five counties with the largest growth in population from 1980 to 1990 in number of persons gained are Harris, Tarrant, Dallas, Bexar and Travis Counties. As noted below, the growth in the Hispanic and non-Hispanic black population in these counties accounted for a significant

proportion of the increase in population in each of these counties:

a. The total population of Harris County increased by 408,652 persons from 1980 to 1990. The Hispanic population in Harris County increased by 275,858 persons, accounting for 67.5 percent of the growth in total population in the county. The non-Hispanic black population in Harris County increased by 58,674 persons, accounting for 14.4 percent of the county's growth.

b. The total population of Tarrant County increased by 309,223 persons from 1980 to 1990. The Hispanic population in Tarrant County increased by 72,247 persons, accounting for 23.4 percent of the growth in total population in the county. The non-Hispanic black population in Tarrant County increased by 37,765 persons, accounting for 12.2 percent of the county's growth.

c. The total population of Dallas County increased by 296,420 persons from 1980 to 1990. The Hispanic population in Dallas County increased by 161,069 persons, accounting for 54 percent of the growth in the total population of the county. The non-Hispanic black population in Dallas County increased by 76,343 persons, accounting for 25.8 percent of the county's growth.

d. The total population of Bexar County increased by 196,594 persons from 1980 to 1990. The Hispanic population in Bexar County increased by 128,269 persons, accounting for 65.2 percent of the growth in the total population of the county. The non-Hispanic black population in Bexar County

increased by 13,326 persons, accounting for 6.8 percent of the county's growth.

e. The total population of Travis County increased by 156,834 persons from 1980 to 1990. The Hispanic population in Travis County increased by 49,401 persons, accounting for 31.5 percent of the growth in the total population in the county. The non-Hispanic black population of Travis County increased by 16,576 persons, accounting for 10.6 percent of the county's growth.

13. According to the 1990 Census, there are 644,935 Hispanic persons in Harris County, of whom 405,735 are of voting age.

14. According to the 1990 Census, there are 527,964 non-Hispanic black persons in Harris County, of whom 359,248 are of voting age.

15. According to the 1990 Census, there are 362,130 non-Hispanic black persons in Dallas County, of whom 243,918 are of voting age.

16. Significant increases in Hispanic population occurred between 1980 and 1990 in several other counties:

a. The Hispanic population of Cameron County increased by 51,341 persons between 1980 and 1990.

b. The Hispanic population of El Paso County increased by 114,618 persons between 1980 and 1990.

c. The Hispanic population of Hidalgo County increased by 96,760 persons between 1980 and 1990.

d. The Hispanic population of Webb County increased by 34,227 persons between 1980 and 1990.

17. According to the 1990 Census, the ideal size of a Texas congressional district is 566,217.

Prior Congressional Redistrictings

18. The State of Texas is a covered jurisdiction under the special provisions of Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, and Texas must obtain preclearance-from the United States Attorney General or the U.S. District Court for the District of Columbia for any voting change prior to its implementation.

19. On January 29, 1982, the United States Department of Justice interposed an objection to Texas' first post-1980 congressional redistricting plan, Senate Bill 1 (1981) ("SB 1"). Government Exhibit 1001 is a true and accurate copy of the January 29, 1982, objection letter.

20. The January 29, 1982 objection letter, stated:

> The area of concern is the area comprising proposed Districts 15 and 27. This portion of South Texas experienced substantial growth during the past decade and the 1980 Census reveals that 67 percent of the persons residing in this area are Mexican Americans. Under the plan as drawn, however, this very significant Mexican-American concentration and growth area seems to be proportioned inequitably between these two districts so that while proposed District 15 is 80.4 percent Mexican-American, proposed District 27 is only 52.9 percent Mexican-American. We have received allegations that this method of dividing the area dilutes the voting strength of the Mexican-American community as it exists in this area; we are also aware that numerous alternative plans were presented which would not have this effect and that such alternatives were rejected.

21. Government Exhibit 1002 is an accurate copy of a map reflecting the 1981 Texas congressional redistricting plan to which an objection was interposed.

22. Government Exhibit 1003 is a true and accurate copy of a table listing the racial and ethnic population statistics of the districts of the 1981 Texas congressional redistricting plan to which an objection was interposed.

23. During both the post-1970 and post-1980 redistricting processes, black citizens in Dallas advocated for the creation of a congressional district in Dallas in which black citizens could elect a candidate of choice.

Terrazas Litigation

24. On May 24, 1991, Republican plaintiffs in Terrazas v. Slagle, 821 F. Supp. 1162 (W.D. Tex. 1993), brought an action under the 14th and 15th Amendments to the Constitution and the Voting Rights Act against various officials of the State of Texas and the Texas Democratic Party. The lawsuit was filed before the adoption of Chapter 7 (1991, Second Special Session), the 1991 Texas congressional redistricting plan. Government Exhibit 1004 is a true and accurate copy of the original complaint in this action.

25. In their First Amended Original Complaint, filed October 21, 1991, the plaintiffs in Terrazas challenged the 1991 Texas congressional redistricting plan as unconstitutional and violative of the Voting Rights Act, and alleged that it:

> sacrifices the rights of racial and political minorities to enhance the reelection chances of Anglo Democrat incumbents by fragmenting and concentrating the population centers of Hispanics and Republicans, diminishing the likelihood that candidates of their choice can be elected from within their communities.

Government Exhibit 1005 is a true and accurate copy of the First Amended Original Complaint filed on October 21, 1991 in Terrazas.

26. The court in Terrazas ruled that the 1991 Texas congressional redistricting plan did not dilute the voting rights of racial, ethnic or political minorities in violation of the Constitution or the Voting Rights Act, Terrazas v. Slagle, 821 F. Supp. 1162 (W.D. Tex. 1993), after having denied the plaintiffs' request for a preliminary injunction against use of the plan for the 1992 elections. Terrazas v. Slagle, 789 F. Supp. 828 (W.D. Tex. 1992).

Adoption of the Congressional Plan

27. The following committees and subcommittees of the Texas legislature were involved in the task of redistricting in 1990 and 1991: the Senate Select Committee on Legislative Redistricting, chaired by Senator Bob Glasgow; the House Committee on Redistricting, chaired by Representative Tom Uher; the Senate Committee of the Whole on Redistricting, chaired by Senator Chet Brooks, which had two subcommittees: the Subcommittee on Congressional Districts, chaired by then State Senator Eddie Bernice Johnson, and the Subcommittee on Legislative Redistricting, chaired by Senator Bob Glasgow; and the Senate Committee of the Whole, chaired by Senator Chet Brooks. The staff of the Senate Subcommittee on Congressional Districts included Lee Nobles, Jason Justice, and Sandra Coaxum. The staff for the Senate Subcommittee on Legislative Redistricting included Carl Reynolds, Chris Sharman, Shannon Noble and Laura McElroy.

28. State Representative Kent Grusendorf was a member of the House Committee on Redistricting during the 1991 redistricting process.

29. The congressional redistricting plan in effect from 1983-1991 is listed in the Texas redistricting computer system as plan C001.

30. An alternative congressional redistricting plan created by then State Senator Eddie Bernice Johnson is listed in the Texas redistricting computer system as plan C500.

31. An alternative congressional redistricting plan created by George Korbel, which did not include the entire state, is listed in the Texas redistricting computer system as plan C510.

32. An alternative congressional redistricting plan created by the Texas congressional delegation is listed in the Texas redistricting computer system as plan C525.

33. An alternative congressional redistricting plan created by Bill Owens and A.J. Pate is listed in the Texas redistricting computer system as plan C606.

34. An alternative congressional redistricting plan created after the adoption of H.B. 1 by Dr. Ron Weber with technical assistance from Scott Simms is listed in the Texas redistricting computer system as C676.

35. The 1991 Texas congressional redistricting plan, Chapter 7 (1991 Second Special Session) (also known as "HB 1" and Plan C657), was enacted by the Texas legislature on August 25, 1991, and signed by Governor Ann Richards on August 29, 1991. Government Exhibit 1006 is a true and accurate copy of HB 1, passed by the Texas Legislature, Second Called Session, 1991.

36. The State of Texas initially submitted its 1991 congressional redistricting plan to the Attorney General for Section 5 preclearance on September 16, 1991, and supplemented its submission thereafter.

37. On November 18, 1991, the Texas congressional redistricting plan received Section 5 preclearance from the Attorney General. Government Exhibit 1007 is a true and accurate copy of the November 18, 1991, determination letter.

38. In the 1991 Texas congressional redistricting plan, the counties of Austin, Brazoria, Brazos, Cooke, Ellis, Gregg, Hunt, Fort Bend, Johnson, Kaufman, Lubbock, McCullough, Nacogdoches, Parker, Smith, Tom Green,

Travis, Waller and Williamson are each divided between two congressional districts, each of which is majority Anglo in total population.

39. In the 1991 Texas congressional redistricting plan, the counties of Comal, Ector, and Guadalupe are each divided between two congressional districts, one of which is majority Anglo in total population and the other is majority Hispanic in total population.

40. In the 1991 Texas congressional redistricting plan, the counties of El Paso, Kleberg, Jim Wells, and Willacy are each divided into two congressional districts, each of which is majority Hispanic in total population.

41. In the 1991 Texas congressional redistricting plan, McCullough County is the only divided county in congressional District 11.

42. In the 1991 Texas congressional redistricting plan, Tom Green County is the only divided county in congressional District 17.

43. In the Plan Analysis Reports (PARs) generated by the Texas redistricting computer system, the column reflecting "black" population data includes black Hispanics, but Hispanics are not double-counted in the column which adds black and Hispanic population data ("B + H.").

44. Government Exhibit 1000 is a true and accurate copy of PAR 313B for Plan C657, Allocated District Election Analysis Using 1992 VTD's with County Subtotals.

The Texas Congressional Delegation

45. During the consideration of congressional redistricting by the Texas legislature in 1991, the Texas congressional delegation had 27 members.

46. During the consideration of the 1991 Texas congressional redistricting, of the 27 members of the Texas congressional delegation, 18 were Democrats and 9 were Republicans.

47. During the consideration of 1991 Texas congressional redistricting, of the 27 members of the Texas

congressional delegation, one was black, four were Hispanic, and 22 were Anglo.

48. As a result of the 1990 Census, the Texas congressional delegation increased to 30 members.

49. Of the 30 members of the Texas congressional delegation elected in 1992 after the 1991 Texas congressional redistricting, 20 are Democrats and 10 are Republicans.

50. Of the 30 members of the Texas congressional delegation elected in 1992 after the 1991 Texas congressional redistricting, two are black, five are Hispanic, and 23 are Anglo.

51. Each incumbent member of congress, except Albert Bustamante, an Hispanic Democrat who represented District 23, was reelected to congress in 1992. Bustamante was defeated in the 1992 General Election by Henry Bonilla, an Hispanic Republican.

52. Under the 1991 Texas congressional redistricting plan, the residence of each incumbent was included in that incumbent's district, i.e., no two incumbent members of congress were paired in the same congressional district.

Plaintiffs' Letter to the District Court Clerk Regarding Designation of Deposition Excerpts

Dated July 8, 1994

July 8, 1994

Clerk, United States District Court
Attn: Darlene Maury
Southern District of Texas
515 Rusk Avenue, 5th Floor
Houston, TX 77002

Re: Vera, *et. al.* v. Richards, *et. al.*, Civil Action H-94-0277, In the U.S. District Court, Southern District of Texas, Houston Division

Dear Sirs:

In the two accompanying boxes, please enclosed find the following depositions for filing with the court. Unless otherwise noted, these are the originals:
Jeff Archer, June 10, 1994 (copy)
Edward Blum, April 8, 1994
Robert R. Brischetto, June 24, 1994
Ed Chen, April 8, 1994
Kent Grusendorf, June 17, 1994 (copy)
Hon. Eddie Bernice Johnson, June 13, 1994
Lisa Robin Handley, Ph. D., June 23, 1994
Roman Martinez, June 16, 1994
Roman Martinez, June 21, 1994 (Volume II)
Roman Martinez, June 21, 1994 (Volume III)
Dr. Susan McManus, June 22, 1994
Pauline Orcutt, April 26, 1994 (copy)

William C. Owens, Jr., June 9, 1994
A. J. Pate, June 16, 1994
Kenneth Powers, April 26, 1994 (copy)
Carl Vernon Reynolds, June 17, 1994 (copy)
Christopher Martin Sharman, June 18, 1994
Barbara Thomas, June 8, 1994 (copy)
Al Vera, April 8, 1994
Dan Weiser, June 23, 1994
Dr. Ronald Weber, Volume I, June 22, 1994
Dr. Ronald Weber, Volume II, June 22, 1994

Copies of these depositions, with offers of testimony marked in yellow by Plaintiffs and in blue by Defendants are concurrently being delivered to the chambers of Hon. Edith Jones. For each deposition there is a page and line summary, although the format varies somewhat.

Certain of the exhibits (handdrawn maps of Hon. Roman Martinez) to the June 26, 1994 deposition of Mr. Martinez are not included either with the original filing or with the annotated copies for the court. These may be found in Plaintiffs' Trial Exhibit 11.

Sincerely Yours,

Douglas E. Markham

cc: Mr. Renea Hicks, State Solicitor
Office of the Texas Attorney General
Ms. Gay Hume/Mr. Richard Jerome
United States Department of Justice
Ms. Judith Sanders-Castro
Reyes Intervenors/MALDEF
Ms. Penda Hair
Lawson Intervenors/NAACP

DEPOSITION OF EDWARD BLUM

Marked by Planitiffs (in yellow):

From		To	
Page	Line	Page	Line
46	15	47	2
51	13	52	6
53	14	55	4
56	6	58	14
87	9	88	2
91	11	91	23
120	18	121	5

Marked by Defendants and Defendant-Intervenors (in blue):

From		To	
Page	Line	Page	Line
7	12	10	9
11	3	11	22
95	3	96	3
104	5	105	6
105	23	106	14

DEPOSITION OF EDWARD CHEN

Marked by Planitiffs (in yellow):

From		To	
Page	Line	Page	Line
31	16	32	25
40	15	40	25
46	15	47	22
50	16	54	12

Marked by Defendants and Defendant-Intervenors (in blue):

From Page	Line	To Page	Line
19	7	24	13
37	19	38	4
64	9	64	18
119	3	121	1
123	13	124	2
108	10	109	12
114	2	114	21
126	2	128	23

DEPOSITION OF PAULINE ORCUTT

Marked by Plaintiffs

p. 22 lines 20 to 25
p. 23 lines 1 to 13
p. 26 lines 3 to 17
p. 30 lines 7 to 22
p. 34 line 22 to p. 35 line 7
p. 61 line 23 to p. 62 line 1
p. 66 line 24 to p. 67 line 22
p. 84 lines 4 to 18
p. 85 lines 2 to 3
p. 86 line 25 to p. 87 line 9
p. 89 lines 3 to 25
p. 135 lines 11 to 23

Marked by Defendants and Defendant-Intervenors (in blue):

From Page	Line	To Page	Line
7	11	8	1
10	1	10	11
24	3	25	7
15	6	17	3

26	20	28	9
45	12	45	16
46	14	46	19
59	11	59	17
60	19	61	22
62	11	64	13
67	23	68	3
71	23	71	25
84	19	85	1
86	22	86	24

DEPOSITION OF BARBARA THOMAS

Marked by Plaintiffs (in yellow)

p. 15 line 18 to p. 17 line 13
p. 24 line 8 to p. 27 line 9
p. 35 line 23 to p. 36 line 12
p. 36 line 18 to p. 38 line 11
p. 41 line 3 to p. 42 line 5
p. 61 line 3 to p. 64 line 10
p. 101 line 17 to p. 102 line 7
p. 129 line 8 to p. 130 line 4

Marked by Defendants and Defendant-Intervenor (in blue)

p. 7 line 17 to p. 8 line 17.
p. 12 line 7 to p. 13 line 21.
p. 47 line 4 to p. 47 line 15
p. 58 line 15 to p. 58 line 23.
p. 60 line 15 to p. 60 line 21.
p. 64 line 11 to p. 64 line 13.
p. 66 line 21 to p. 66 line 24.
p. 69 line 22 to p. 70 line 12.
p. 71 line 4 to p. 71 line 10.
p. 72 line 7 to p. 72 line 10.
p. 74 line 11 to p. 74 line 18.

p. 78 line 4 to p. 79 line 9.
p. 87 line 1 to p. 89 line 5.
p. 96 line 22 to p. 97 line 7.
p. 100 line 11 to p. 101 line 16.
p. 103 line 21 to p. 104 line 3.

DEPOSITION OF AL VERA

Marked by Planitiffs (in yellow):

From		To	
Page	Line	Page	Line
8	14	13	9
51	20	54	10

Marked by Defendants and Defendant-Intervenors (in blue):

From		To	
Page	Line	Page	Line
7	19	8	5
12	9	13	9
53	6	53	20
67	8	67	16
78	10	78	17
86	4	86	15
94	14	94	25
100	11	101	7
107	13	108	7

DEPOSITION OF JEFF ARCHER

Marked by Planitiffs (in yellow):

From		To	
Page	Line	Page	Line
5	15	1	18
6	21	7	3

7	9	7	16
8	23	9	6
17	7	17	11
19	24	20	2
24	12	25	7
25	13	25	19
30	10	32	5
32	18	33	12
35	16	41	2
41	24	42	21
43	8	46	2
54	7	55	14
56	17	57	14
68	8	70	16
71	7	73	10
82	14	82	22
83	8	86	12
88	6	89	25
97	21	99	18
101	14	101	19
104	25	105	3
106	10	110	5
113	21	114	11
117	5	118	16
118	23	121	2
122	4	122	10
131	17	132	8
133	8	133	13
136	1	136	15
137	1	137	2
137	17	137	22
141	7	141	17
169	5	170	8
177	4	177	16
178	17	179	13
189	15	190	6
193	19	194	17

202	25	204	5
206	12	209	1
217	25	225	9
236	5	236	9

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From		To	
Page	Line	Page	Line
79	11	80	6
86	13	88	5
121	3	122	3
132	18	133	7
133	14	134	21
179	16	180	11
182	1	184	21
185	3	187	15
188	6	189	4
190	7	191	6
192	12	193	18
211	2	212	14
216	6	216	15
225	10	225	22
234	9	236	4
247	18	249	4

DEPOSITION OF ROBERT BRISCHETTO

Marked by Plaintiffs (in yellow):

From		To	
Page	Line	Page	Line
3	7	4	24
5	7	5	8
6	10	6	14
6	19	6	24
7	12	8	13

11	11	11	16
14	8	14	16
15	21	16	5
18	13	29	10
30	5	30	21
31	7	32	2
37	7	42	12
44	2	44	6
44	14	44	23
47	3	48	3
48	24	52	6
53	20	54	22
56	14	56	23
57	15	58	9
59	9	59	18
62	3	63	5
63	15	64	8
64	20	65	8
70	15	71	12
76	3	76	21
77	25	78	23
79	12	80	6
85	14	85	19
86	19	86	24
87	24	90	1
100	1	101	15

Marked byDefendants and Defendant-Intervenors (in blue):

From		To	
Page	Line	Page	Line
11	17	12	11
14	17	15	9
16	9	16	19
30	22	30	25
58	10	59	8

63	15	63	19
73	18	75	2
80	7	80	19
83	3	85	2
90	2	90	7
91	3	91	17
92	2	92	19
93	25	94	10
96	1	96	11
96	14	99	7

DEPOSITION OF KENT GRUSENDORF

Marked by Plaintiffs (in yellow):

From		To	
Page	Line	Page	Line
16	10	16	20
37	15	37	21
42	25	45	22
47	13	47	14
59	11	60	1

Marked by Defendants and Defendant-Intervenors (in blue):

From		To	
Page	Line	Page	Line
14	4	15	7
36	17	37	14
38	10	39	4
41	1	41	13
47	6	47	11
60	2	60	11
64	12	64	16
85	23	86	5

DEPOSITION OF LISA HANDLEY

Marked by Plaintiffs (in yellow):

From		To	
Page	Line	Page	Line
23	26	26	16
38	7	42	10
46	2	46	25
49	4	50	10
56	20	57	4
68	1	69	13
72	7	73	1
75	6	75	18
82	8	86	20
91	2	95	5
98	9	101	23

Marked by Defendants and Defendant-Intervenors (in blue):

From		To	
Page	Line	Page	Line
22	4	22	10
110	5	110	15

DEPOSITION OF EDDIE BERNICE JOHNSON

Marked by Plaintiff (in yellow):

From		To	
Page	Line	Page	Line
3	3	3	21
4	20	5	17
6	10	7	15
7	18	7	21
10	14	11	21
13	1	14	13

15	5	15	18
17	9	17	14
19	17	21	13
26	20	29	7
30	20	31	12
37	3	37	20
40	21	41	16
42	18	43	8
43	13	43	21
44	17	45	21
47	19	49	7
50	15	52	10
55	6	56	1
64	9	64	14
67	8	68	11
73	17	74	12
78	10	79	4
80	2	81	18
83	3	85	3
87	14	88	6
90	19	91	13
94	4	95	5
96	20	98	7
102	11	102	21
105	11	106	6
111	9	113	5
118	4	118	20
121	3	121	5
129	18	130	8
132	9	134	5
165	17	166	15

Marked by Defendants and defendant-Intervenors (in blue):

From		To	
Page	Line	Page	Line
9	11	9	21

10	1	10	4
19	13	19	16
22	11	22	18
29	15	29	21
30	1	30	3
31	13	31	21
32	1	32	11
33	19	33	21
34	1	34	21
35	1	35	18
38	15	38	20
39	9	39	14
40	2	40	10
41	17	41	19
44	11	44	13
52	11	52	21
53	1	53	21
54	1	54	12
56	2	56	15
61	3	61	12
63	9	63	21
64	1	64	8
64	15	64	21
65	1	65	12
74	13	74	14
74	18	74	21
75	1		
81	19	81	21
82	1	82	15
88	14	88	18
92	2	92	12
98	19	98	21
99	1		
99	21		
100	1	100	5
100	21		
101	1	101	21

102	1	102	2
103	1	103	4
108	8	108	20
113	12	113	21
114	1	114	13
114	21		
115	1	115	21
116	1	116	5
116	21		
117	1	117	5
118	21		
119	1	119	3
120	17	120	21
121	1	121	2
121	6	121	16
126	4	126	21
127	1	127	21
128	1	128	2
128	12	128	21
129	1	129	4
129	12	129	17
130	9	130	21
131	1	131	21
132	1	132	8
134	6	134	21
135	1	135	21
136	1	136	21
137	1	137	21
138	1	138	21
139	1	139	12
140	1	140	21
141	1	141	15
142	3	142	19
143	9	143	21
144	1	144	13
147	11	147	21
148	1	148	13

149	1	149	9
150	7	150	13
151	6	151	21
152	1	152	8
158	15	158	21
159	1	159	21
160	1	160	11

DEPOSITION OF ROMAN MARTINEZ

VOLUME I

Marked by Plaintiffs (in yellow):

From		To	
Page	Line	Page	Line
9	9	8	8
9	2	9	25
13	1	15	2
15	25	17	23
20	21	24	21
26	5	28	12
29	16	30	8
31	13	32	8
33	12	34	11
34	19	35	21
38	1	46	16
47	1	51	12
52	15	52	23
53	4	55	25
56	9	57	6
60	18	62	8
63	11	64	9
70	3	70	17
71	6	76	10
77	10	79	21
80	10	80	20

82	22	83	23
85	14	86	7
88	9	89	21
90	23	95	13
97	2	97	17

VOLUME II

From		To	
Page	Line	Page	Line
6	22	8	1
9	23	9	25
11	9	11	22
13	3	17	15
18	16	18	24
23	16	24	12
25	24	29	4
33	18	34	24
37	23	38	14

VOLUME III

From		To	
Page	Line	Page	Line
5	5	7	11
8	20	10	7
15	4	15	8

Marked by Defendants and Defendant-Intervenors (in blue):

VOLUME I

From		To	
Page	Line	Page	Line
8	9	8	23
20	5	20	6
20	12	20	20

31	3	31	7
46	17	46	25
58	12	58	15
59	23	59	25
60	1	60	7
60	11	60	17
62	9	62	25
63	1	63	3
76	11	76	15
86	22	86	25
87	1	87	8
96	11	96	18
96	21	96	25
97	1		

VOLUME II

From Page	Line	To Page	Line
8	2	8	3
8	8	8	11
20	11	20	12
20	15	20	19

VOLUME III

From Page	Line	To Page	Line
8	3	8	19
13	16	14	9
16	25		
17	1	18	2
18	6	20	15

Marked by Plaintiffs (in yellow):

From		To	
Page	Line	Page	Line
22	12	23	3
26	2	26	18
33	6	33	12
52	20	53	22
56	7	56	25
57	7	59	4
68	12	69	4
86	5	86	25
96	22	97	3

Marked by Defendants and Defendant-Intervenors (in blue):

From		To	
Page	Line	Page	Line
21	17	22	11
23	25	24	5
35	6	37	21
42	14	43	10
45	1	47	9
51	18	52	19
54	14	54	22
54	23	55	4
62	1	65	19
74	11	74	22

DEPOSITION OF WILLIAM OWENS

Marked by Plaintiffs (in yellow):

From		To	
Page	Line	Page	Line
11	2	11	20

13	15	14	10
21	5	21	11
24	1	25	8
41	10	42	9
53	19	54	7
57	14	57	17
82	2	82	22
119	19	119	25
122	6	123	2
143	19	144	10
158	21	159	5
176	22	177	6
179	22	180	24
186	23	186	10
195	5	196	2
209	10	210	16
215	10	215	16
220	24	221	8
223	8	223	10
275	2	275	15

Marked by Defendants and Defendant-Intervenors (in blue):

From		To	
Page	Line	Page	Line
8	5	9	19
17	18	18	6
27	25	33	1
33	14	35	3
38	18	39	6
40	13	41	9
42	10	43	6
46	13	51	11
52	18	53	18
59	24	62	19
63	18	67	21
68	3	69	16

74	14	82	1
90	6	92	24
97	10	97	14
99	14	101	14
108	13	108	24
124	15	130	3
132	24	133	19
134	10	137	8
138	24	140	2
144	11	144	25
146	12	148	9
151	5	153	1
173	8	175	9
223	11	224	11
218	1	218	10

DEPOSITION OF A.J. PATE

Marked by Plaintiffs (in yellow):

From		To	
Page	Line	Page	Line
7	10	8	4
23	17	23	25
24	1	24	13
29	19	29	25
37	1	37	9
48	12	48	17
53	23	54	18
55	13	55	25
57	14	57	25
58	1	58	1
60	20	60	25
61	1	61	1
66	16	66	25
67	1	67	10
73	6	73	25

74	1	74	2
74	14	74	22
80	14	80	28
81	1	81	4
84	7	84	25
85	1	85	7
85	17	85	25
86	1	86	18
87	1	87	15
89	24	89	28
90	1	90	2
91	17	91	25
92	1	92	10
92	23	92	25
93	18	93	25
94	1	94	20
97	7	97	18
104	16	104	25
105	1	105	25
106	1	106	9

Marked by Defendants and Defendant-Intervenors (in blue):

From		To	
Page	Line	Page	Line
7	10	8	12
9	12	11	2
24	16	24	25
25	10	27	21
32	2	32	13
36	14	37	9
39	4	40	15
42	4	42	18
43	3	43	12
51	18	53	13
55	13	57	17
60	10	61	1

61	6	61	24
62	13	64	8
64	23	65	14
69	23	70	23
72	1	72	7
72	24	74	22
75	11	76	17
77	19	79	18
80	13	81	12
83	7	84	25
85	14	85	23
90	11	93	9
94	20	96	5
97	19	98	5
98	16	100	1
102	20	103	14
107	10	107	15
111	4	111	9
112	19	113	14

DEPOSITION OF KENNETH POWERS

Marked by Plaintiffs (in yellow):

p.	12	lines 14 to 16
p.	12	line 20 to p. 13 line 1
p.	13	line 3 to line 14
p.	22	lines 6 to 10
p.	27	lines 15 to 24
p.	31	lines 1 to 16
p.	43	line 17 to p. 44 line 12
p.	48	lines 6 to 20
p.	50	lines 1 to 12
p.	61	line 9 to p. 62 line 1
p.	65	lines 1 to 7

p.	96	lines 2 to 10
p.	107	lines 13 to 24
p.	134	line 13 to line 22

Marked by Defendants and Defendant-Intervenors (in blue):

From Page	Line	To Page	Line
9	11	12	14
26	2	26	6
28	11	29	14
46	25	47	4
59	16	61	8
77	6	77	10
85	9	86	1
99	6	99	21
102	2	103	2

DEPOSITION OF CARL VERNON REYNOLDS

Marked by Plaintiffs (in yellow):

From Page	Line	To Page	Line
5	21	8	12
11	12	16	1
17	4	17	22
22	10	22	18
23	10	24	9
26	7	26	17
30	18	33	15
34	4	36	15
38	16	39	24
40	19	41	20
48	11	48	15

49	13	49	15
53	2	53	16
54	21	55	6
56	17	57	7
58	6	59	12
62	4	62	25
63	10	63	15
66	9	66	14
73	5	74	4
85	9	86	17
92	17	92	24
94	12	94	20
97	4	97	8
99	17	104	20
105	18	105	25
108	1	108	3
110	10	111	5
119	16	120	24
122	3	122	12
127	15	128	16

Marked by Defendants and Defendant-Intervenors (in blue):

From		To	
Page	Line	Page	Line
24	19	25	5
43	16	43	22
128	15	129	17

DEPOSITION OF CHRISTOPHER MARTIN SHARMAN

Marked by Plaintiffs (in yellow)

p. 36 line 13 to p. 45 line 21
p. 52 lines 11 to 17

p. 57 lines 3 to 24
p. 164 lines 2 to 16
p. 166 line 20 to p. 167 line 5
p. 174 lines 15 to 23

Defendants' Offer of Proof (in blue)

p. 105 line 8 to p. 144 line 3

DEPOSITION OF DR. RONALD WEBER VOL. 1

p. 38 lines 7 to 25
p. 39 all
p. 40 lines 1 to 3
p. 43 lines 20 to 25
p. 44 lines 1 to 11 and lines 16 to 25
p. 45 lines 1 to 11
p. 51 lines 24 to 25
p. 52 lines 1 to 4 and lines 5 to 25
p. 58 lines 19 to 25
p. 59 lines 1 to 11
p. 73 lines 4 to 9
p. 83 lines 23 to 25
p. 84 lines 1 to 23
p. 114 lines 20 to 25
p. 115 lines 1 to 25
p. 116 lines 1 to 5
p. 147 lines 22 to 25
p. 148 lines 1 to 11
p. 159 lines 10 to 25
p. 160 lines 1 to 10
p. 185 lines 5 to 9

DEPOSITION OF DR. RONALD WEBER VOL. 2

Marked by Plaintiffs (in yellow):

p.	34	lines 21 to 25
p.	35	lines l to 8
p.	43	lines 8 to 18
p.	46	lines 7 to 25
p.	47	lines l to 25
p.	48	lines l to 25
p.	49	lines l to 25
p.	50	lines l to 2
p.	54	lines 9 to 25
p.	55	lines 1 to 9
p.	58	lines 12 to 25
p.	59	lines 10 to 25
p.	60	lines 1 to 8

Marked by Defendants and Defendant-Intervenors (in blue):

VOLUME I

From		To	
Page	Line	Page	Line
7	4	8	1
40	4	40	16
42	1	43	19
48	22	49	20
50	7	51	23
56	3	57	6
75	19	75	22
79	3	83	22
89	10	91	11
91	12	112	12
129	13	133	13
133	19	135	6

141	12	142	18
142	19	143	8
151	20	154	2
154	10	154	20
159	7	159	9
204	12	206	3
212	12	212	25

VOLUME II

From		To	
Page	Line	Page	Line
5	10	8	19
13	21	19	23
21	8	21	11
24	8	24	18
26	12	27	14
33	2	34	8
39	24	41	8
60	19	62	14

DEPOSITION FOR DAN WEISER

Marked by Plaintiffs (in yellow):

From		To	
Page	Line	Page	Line
5	24	6	2
6	5	6	14
7	1	7	7
8	2	9	18
12	16	13	21
13	22	21	18
24	5	25	23
38	25	39	13
40	7	41	16

43	21	44	4
46	22	47	10
50	3	51	3
52	3	52	7
53	3	55	16
58	17	59	1
59	17	60	25
62	14	63	4
64	22	65	25
68	18	69	1
78	12	79	5
82	4	82	21
85	2	86	12
86	13	88	22
91	10	92	11
94	25	98	12
99	10	100	12
101	10	102	9
102	24	103	13
112	13	113	9
122	19	126	8
133	17	134	3
139	3	139	15
142	8	144	4
170	19	171	25
172	1	172	12

Marked by Defendants and Defendant-Intervenors (in blue):

From		To	
Page	Line	Page	Line
7	8	7	13
22	19	24	4
37	4	38	24
39	18	40	2
41	19	42	6
47	11	48	15

51	4	51	25
52	17	53	2
57	21	58	18
59	10	59	14
61	2	62	10
63	13	63	17
64	7	64	11
67	15	68	9
69	2	69	10
79	6	79	8
81	10	81	20
82	22	83	7
88	23	88	24
89	12	89	22
93	22	94	24
102	11	102	23
105	12	106	10
108	15	109	3
113	9	113	11
120	11	120	17
139	19	139	20
144	25	145	7
146	14	146	23
148	7	148	16
150	6	150	24
165	16	166	13
167	8	168	15
169	22	170	4
174	17	175	18

Plaintiffs' Exhibit 4C

TEXAS CONGRESSIONAL REDISTRICTING
HOUSE BILL 1
72ND LEGISLATURE, 2ND CALLED SESSION

NARRATIVE OF VOTING RIGHTS ACT CONSIDERATIONS IN AFFECTED DISTRICTS

September, 1991

Texas Congressional Redistricting Staff

INTRODUCTION

The purpose of this narrative is to describe the Congressional redistricting process and to give an overview of the efforts made to address Voting Rights Act concerns. The redistricting process began in 1990 when outreach hearings were conducted throughout the state. These outreach hearings, which were conducted by the interim Senate Select Committee on Legislative Redistricting and by the House Redistricting Committee, were primarily held in those areas where minorities would be mostly affected and allowed members of the community to express their desires and concerns about the prospective House, Senate and Congressional districts. Additional hearings were held during the Regular Session of the 72nd Legislature.

One of the primary concerns of the minority communities was the purported undercount and the affect that it would have on the legislative and congressional redistricting process. The legislature did make certain adjustments to mitigate the impact of the undercount in drawing legislative districts; however, the one-person, one-vote requirement for congressional districts only allows a slight deviation, if any, from equal populations among the several districts. The proposed Congressional plan successfully achieves absolute

equal population among the districts, i.e. zero percent (0%) deviation. Since the Deparment of Commerce decided not to make an official adjustment, no population adjustments were made for the undercount.

The actual "drawing of the lines" of the new Congressional districts was a very long and tedious process which began during the Regular Session of the 72nd Legislature. In the Texas Senate, this process was led by Senator Eddie Bernice Johnson, Chair of the Senate Subcommittee on Congressional Districts and Senator Chet Brooks, Chair of the Senate Committee of the Whole. Representative Tom Uher led the redistricting efforts of the Texas House of Representatives. In designing the minority districts, it was necessary to consider several factors that impact the actual voting strength of the minority population. These factors include the total minority population, the voting age minority population, voter registration, voter turnout, and whether the minority group members include non-U.S. citizens or those otherwise not eligible to vote. The ethnic population in each proposed minority district has been carefully analyzed to ensure that members of the protected minority group has a reasonable opportunity to elect a Congressional representative of their choice

REGIONAL ANALYSIS OF PROPOSED CONGRESSIONAL DISTRICTS

As a result of the 1990 census count, Texas was apportioned three (3) additional Congressional seats. Because of the historical and anticipated population growth patterns, it was agreed that the new districts should be configured in such a way as to allow members of racial, ethnic, and language minorities to elect Congressional representatives. Accordingly, the three new districts include a predominantly black district drawn in the Dallas County area and predominantly Hispanic districts in the Harris County area and in the South Texas region. In addition to creating the

three new minority districts, the proposed Congressional redistricting plan increases the black voting strength of the current District 18 (Harris County) by increasing the population to assure that the black community may continue to elect a candidate of its choice. District 18 is currently represented by a black Congressman, Craig Washington; however, the population has shifted over the last ten years resulting in the current district having only 35.1% total black population and 42.2% total Hispanic population. The newly proposed District 18 contains 50.9% total black population and 15.3% total Hispanic. The Hispanic population that is currently in Dsnct 18 has been shifted to the newly proposed Hispanic District 29 which is also in Harris County.

DALLAS AND TARRANT COUNTY MINORITY DISTRICTS

One of the main areas of controversy during the redistricting process was Dallas County. In order to create the new black district in this area, the district lines had to be drastically modified from the current configuration. Under the 1980 Congressional redistricting plan, the population of Dallas County was included in two (2) districts: (1) District 5 included 22.1% total black population and 20.6% total Hispanic population. Under the 1990 census, this district's population was above the ideal population of 566,217 by 41,965 people. (2) District 24 currently includes 29.4% total black population and 21.3% total Hispanic population. Under the 1990 census, this district is overpopulated by 68,920 people. The proposed Congressional plan distributes the population of Dallas County among three (3) districts including the newly proposed black District 30. The proposed District 30 consists of 50.0% total black population and 17.1% total Hispanic population.

	CURRENT		PROPOSED	
	Black	Hispanic	Black	Hispanic
District 5	22.1%	20.6%	16.3%	17.9%
24	29.4%	21.3%	19.1%	21.8%
30	---	---	50.0%	17.1%

Throughout the course of the Congressional redistricting process, the lines of the proposed District 30 were constantly reconfigured in an attempt to maximize the voting strength for this black community in Dallas County. The black community leaders were in constant contact with Senator Eddie Bernice Johnson, the Chair of the Senate Subcommittee on Congressional Districts, as well as black Dallas Representatives Fred Blair, Jerald Larry and Sam Hudson. While the legislature was in agreement that a safe black district should be drawn in the Dallas County area, the real dispute involved the composition, configuration and quality of that district. The community insisted that "safe" black district be drawn that had a total black population of at least 50%. The community's demands were supported by the NAACP Voter Education Redistricting Project and the Texas State Coalition of NAACP Branches. Both of these groups submitted resolutions and position papers to each member of the Texas State Legislature.

There were many alternative proposals presented. Although some of these proposals showed a more compact configuration, none of them reached the threshold 50% total black population which the community felt was necessary to assure its ability to elect its own Congressional representative without having to form coalitions with other minority groups. There is little evidence of coalition voting between blacks and Hispanics in Dallas County. In fact, it has been judicially noted that blacks and Hispanics generally do not form political coalitions in voting for public officials in Dallas County. The United States District Court in evaluating the Congressional redistricting plan drawn by the

67th Texas Legislature (1981) discussed the forming of a minority coalition in Dallas County:

> "... the defendants group together the black population and Hispanic population into one "minority" category, thereby demonstrating a fundamental insensitivity to the practical reality of minority politics.... Coalitions between blacks and Hispanics are certainly part of the political landscape of Texas.... Ethnic politics in Dallas, however, has been noteworthy for its lack of a legacy of black-brown coalitions. The testimony at trial indicated that blacks and Hispanics frequently staked out positions quite separate from blacks." Seamon v. Upham, 536 F.Supp. 931, 1001 (1982).

The proposed District 30 represents the combined input of black elected officials, black leadership in the Dallas community and other local, state and national minority interest organizations. The goal was to not only create a district that would maximize the opportunity for the black community to elect a Congressional candidate of its choice in 1992, but also one that included some of the major black growth areas which will assure continued electoral and economic opportunities over the next decades. After much analysis, deliberation and negotiations the legislature was able to successfully meet these goals.

The creation of a safe minority district in Dallas County directly affects districts in Tarrant County and surrounding areas. Under the current Congressional configuration, the Tarrant County population is split between Districts 6, 12, and 26. (Tarrant County is not included in the current District 24.) The ethnic composition of the current and proposed districts affecting Tarrant County is as follows:

	CURRENT		PROPOSED	
	Black	Hispanic	Black	Hispanic
District 6	9.3%	9.1%	4.4%	5.4%
12	16.3%	16.1%	8.0%	16.3%
24	-0-	-0-	19.1%	21.8%
26	6.5%	8.8%	4.2%	9.2%

The following percentages represent the black and Hispanic portions of the Tarrant County population in each district:

	CURRENT		PROPOSED	
	Black	Hispanic	Black	Hispanic
District 6	4.4%	4.0%	4.9%	5.3%
12	16.3%	16.1%	9.5%	18.8%
24	-0-	-0-	31.2%	12.3%
26	7.8%	7.9%	1.1%	5.1%

Although the overall percentages for minorities declined slightly, this decrease does not constitute retrogession due to the fact that there is a completely new district created in the Dallas-Tarrant County metroplex area in which minorities will have substantial electoral impact. The new minority district is the proposed District 30 as described above. The proposed District 30 includes 1,207 blacks and 564 Hispanics from Tarrant County.

The proposed Congressional redistricting plan divides the minority community in the southeast portion of Fort Worth between Districts 12 and 24. District 24 includes 73,446 blacks and 29,009 Hispanics from Tarrant County. Members of the black community expressed concern that the proposed cut dilutes the voting strength of this minority community. The specific cut was adopted from a floor amendment which was offered by Representative Garfield Thompson of Fort Worth. Representative Thompson is the only black House member from Tarrant County and currently represents the majority of this black community. The amendment places his current House district into proposed District 24. This

amendment was adopted by the Legislature and incorporated into the final proposed Congressional plan.

An analysis of this geographic area demonstrates that even if all of the 42,732 Tarrant County blacks that are in the proposed District 12 were combined with the 108,340 total blacks in proposed District 24, the total black population in district 24 would only represent 26.7% of District 24's total population. Clearly, this would not be sufficient population to assure that a black or other minority could be elected from this district. Inceasing the total minority percentage from the 19.1% to 26.7% would not guarantee that minorities would have any greater potential for influencing the outcome of an election. In fact, such an increase would likely result in retrogression in that it would eliminate the potential for having an effective swing-vote influence in the adjacent District 12.

HARRIS COUNTY MINORITY DISTRICTS

There were several regional outreach hearings held in the Harris County area. The community expressed their desire to have a new Hispanic district drawn in this area and also raised questions regarding the effect of the undercount. The proposed "safe" minority Districts 18 and 29, as well as the proposed minority impact District 25, are the result of input from the community and from the Harris County elected officials in the Texas Legislature. Throughout the process, modifications were made to increase the percentage of Hispanics in the newly proposed district. The primary spokespersons for the Hispanic community in Harris County were State Representatives Roman Martinez and Mario Gallegos, Houston City Councilman Ben Reyes, Ms. Judith Sanders-Castro of the Mexican-American Legal Defense Fund and Mr. Marc Campos of the Southwest Voter Registration Education Project. Although there was a great deal of controversy concerning the redistricting of the Harris County Senate and House seats, neither the Congressional Subcommittee or its staff was ever presented with any

specific proposals or requests regarding the redistricting of Congressional seats. Most of the concerns had been addressed in drawing the House and Senate districts and the appropriate changes were incorporated into the proposed Congressional districts. The proposed configurations of the Harris County districts were reviewed and approved by the legislative representatives from that area.

District 29

This newly created Hispanic district consists of 10.2% total black population and 60.6% total Hispanic population. Several amendments were made during the legislative process to increase the total number of Hispanics to at least 60% of the district's total population. In drawing this district, the legislature considered requests that were made during the regional hearings and that were implemented in the proposed Senate and House districts. The Hispanic community has not raised objection to the proposed configuration of this new district.

District18

This district was originally designed to be a predominantly black district and has been represented by notable black leaders such as former Congresswoman Barbara Jordan, the late Congressman Mickey Leland, and current Congressman Craig Washington. The current District 18 is underpopulated by 116,549 people and is made up of 35.1% total black population and 42.2% total Hispanic population. In order to increase the total population to the ideal district size, additional black population was taken from adjacent districts thereby increasing the total black population to 50.9% and decreasing the total Hispanic population to 15.3%. The remaining Hispanic population is included in the new proposed Harris County Hispanic district. These changes result in the maximization of minority voting strength for this geographical area.

EL PASO COUNTY MINORITY DISTRICT

This proposed Congressional District is entirely within El Paso County. There was no opposition to the proposed configuration. The ethnic composition is as follows:

	CURRENT		PROPOSED	
	Black	Hispanic	Black	Hispanic
District 16	3.6%	68.4%	3.6%	70.4%

SOUTH TEXAS AND BEXAR COUNTY MINORITY DISTRICTS

Due to the dramatic increase in Hispanic growth in this region of the State, it was clear that a new Hispanic seat should be drawn in the South Texas area. The affected districts include Districts 20 (Bexar County), 23, 15, 27 and the newly proposed Hispanic District 28. The drafting of these district lines was spearheaded by Senator Frank Tejeda, Vice-chair of the Senate Subcommittee on Congressional Districts. Senator Tejeda and his staff were in constant contact with the minority leadership in the South Texas (also known as the Valley) and Bexar County areas. In fact, the drafting of these districts was carefully monitored by representatives of the Mexican-American Legal Defense fund to assure that members of this Hispanic population were not unnecessarily packed in creating the new Hispanic district.

Due to the heavy concentration of Hispanics in these regions, there were no major problems concerning minority voting strength or adjustments of population numbers/percentages. Rather, the controversies were primarily focused on communities of interests disputes involving economic concerns. In fact, during one of the regional hearings in Brownsville, several witnesses testified that there were no racial issues to be considered in drawing districts in the Valley, since Hispanics make up the majority of the population there.

The ethnic composition of the South Texas and Bexar County Districts is as follows:

	CURRENT		PROPOSED	
	Black	Hispanic	Black	Hispanic
District 20	8.2%	69.7%	5.8%	60.7%
23	5.2%	59.3%	2.9%	62.5%
15	0.5%	76.9%	1.1%	74.5%
27	2.4%	66.7%	2.4%	66.2%
28	---	---	8.5%	60.4%

Texas Senate Subcommittee on
Congressional Districts Plan C657
8/24/91

POPULATION COMPOSITION
OF PROPOSED CONGRESSIONAL DISTRICTS

Congressional District 1 Jim Chapman (D)
is composed of the following whole counties: Bowie (81,665), Camp (9,904), Cass (29,982), Delta (4,857), Franklin (7,802), Harrison (57,483), Hopkins (28,833), Lamar (43,949), Marion (9,984), Morris (13,200), Panola (22,035), Red River (14,317), Rusk (43,735), Titus (24,009), Upshur (31,370), Wood (29,380) and the following split counties: Gregg (34,337), Hunt (36,069), Nacogdoches (43,306).

Congressional District 2 Charles Wilson (D)
is composed of the following whole counties: Angelina (69,884). Cherokee (41,049), Grimes (18,828), Hardin (41,320), Houston (21,375), Jasper (31,102), Liberty (52,726), Newton (13,569), Orange (80,509), Polk (30,687), Sabine (9,586), San Augustine (7,999), San Jacinto (16,372), Shelby (22,034), Trinity (11,445), Tyler (16,646), Walker (50,917) and the following split counties: Montgomery (18,722), Nacogdoches (11,447).

Congressional District 3 Sam Johnson (R)
is composed of the following split counties: Collin (135,633), Dallas (430,584).

Congressional District 4 Ralph Hall (D)
is composed of the following whole counties: Fannin (24,804), Grayson (95,021), Rains (6,715), Rockwall (25,604), Van Zandt (37,944) and the following split counties: Collin (47,376), Cooke (30,489), Dallas (8,811),

Denton (34,424), Gregg (70,611), Hunt (28,274), Kaufman (44,728), Smith (111,416).

Congressional District 5 John Bryant (D)
is composed of the following whole counties: Anderson (48,024), Freestone (15,818), Henderson (58,543), Leon (12,665), Limestone (20,946), Madison (10,931), Robertson (15,511), and the following split counties: Brazos (20,495), Dallas (315,899), Kaufman (7,492), Smith (39,893).

Congressional District 6 Joe Barton (R)
is composed of the following split counties: Dallas (13,742), Ellis (27,954), Johnson (30,145), Parker (16,436), Tarrant (477,940).

Congressional District 7 Bill Archer (R)
is composed of the following split county: Harris (566,217).

Congressional District 8 Jack Fields (R)
is composed of the following whole county: Washington (26,154) and the following split counties: Austin (15,616), Brazos (101,367), Harris (255,490), Montgomery (163,479), Waller (4,111).

Congressional District 9 Jack Brooks (D)
is composed of the following whole counties: Chambers (20,088), Galveston (217,399), Jefferson (239,397) and the following split counties: Harris (89,333).

Congressional District 10 J. J. (Jake) Pickle (D)
is composed of the following split county: Travis (566,217).

Congressional District 11 Chet Edwards (D)
is composed of the following whole counties: Bell (191,088), Bosque (15,125), Coryell (64,213), Falls (17,712), Hamilton (7,733), Hill (27,146), Lampasas (13,521), McLennan

(189,123), Milam (22,946), Mills (4,531), San Saba (5,401) and the following split county: McCulloch (7,678).

Congressional District 12 Pete Geren (D)
is composed of the following split county: Johnson (67,020), Parker (48,349), Tarrant (450,848).

Congressional District 13 Bill Sarpalius (D)
is composed of the following whole counties: Archer (7,973), Armstrong (2,021), Baylor (4,385), Briscoe (1,971), Carson (6,576), Castro (9,070), Childress (5,953), Clay (10,024), Collingsworth (3,573), Cottle (2,247), Crosby (7,304), Dickens (2,571), Donley (3,696), Floyd (8,497), Foard (1,794), Garza (5,143), Gray (23,967), Hale (34,671), Hall (3,905), Hardeman (5,283), Hemphill (3,720), Hutchinson (25,689), King (354), Knox (4,837), Lamb (15,072), Lipscomb (3,143), Lynn (6,758), Montague (17,274), Motley (1,532), Potter (97,874), Roberts (1,025), Swisher (8,133), Wheeler (5,879), Wichita (122,378), Wilbarger (15,121) and the following split counties: Cooke (288), Denton (43,705), Lubbock (42,811).

Congressional District 14 Greg Laughlin (D)
is composed of the following whole counties: Aransas (17,892), Bastrop (38,263), Blanco (5,972), Burleson (13,625), Caldwell (26,392), Calhoun (19,053), Colorado (18,383), Fayette (20,095), Gonzales (17,205), Hays (65,614), Jackson (13,039), Lavaca (18,690), Lee (12,854), Matagorda (36,928), Refugio (7,976), Victoria (74,361), Wharton (39,955) and the following split counties: Austin (4,216), Brazoria (59,419), Travis (10,190), Waller (19,279), Williamson (26,816).

Congressional District 15 E. (Kika) De La Garza (D)
is composed of the following whole counties: Bee (25,135), Brooks (8,204), DeWitt (18,840), Goliad (5,980), Hidalgo (383,545), Karnes (12,455), Live Oak (9,556), San Patricio

(58,749) and the following split counties: Jim Wells (10,266), Kleberg (19,349), Willacy (14,138).

Congressional District 16 Ron Coleman (D)
is composed of the following split county: El Paso (566,217).

Congressional District 17 Charles Stenholm (D)
is composed of the following whole counties: Borden (799), Brown (34,371), Callahan (11,859), Coke (3,424), Coleman (9,710), Comanche (13,381), Concho (3,044), Dawson (14,349), Eastland (18,488), Erath (27,991), Fisher (4,842), Haskell (6,820), Hood (28,981), Howard (32,343), Jack (6,981), Jones (16,490), Kent (1,010), Martin (4,956), Mitchell (8,016), Nolan (16,594), Palo Pinto (25,055), Runnels (11,294), Scurry (18,634), Shackelford (3,316), Somervell (5,360), Stephens (9,010), Stonewall (2,013), Taylor (119,655), Throckmorton (1,880), Wise (34,679), Young (18,126) and the following split county: Tom Green (52,746).

Congressional District 18 Craig Washington (D)
is composed of the following split county: Harris (566,217).

Congressional District 19 Larry Combest (R)
is composed of the following whole counties: Andrews (14,338), Bailey (7,064), Cochran (4,377), Dallam (5,461), Deaf Smith (19,153), Gaines (14,123), Hansford (5,848), Hartley (3,634), Hockley (24,199), Moore (17,865), Ochiltree (9,128), Oldham (2,278), Parmer (9,863), Randall (89,673). Sherman (2,858), Terry (13,218), Yoakum (8,786) and the following split counties: Ector (84,590), Lubbock (179,825), Midland (49,936).

Congressional District 20 Henry B. Gonzales (D)
is composed of the following split county: Bexar (566,217).

Congressional District 21 Lamar Smith (R)
is composed of the following whole counties: Bandera (10,562), Burnet (22,677), Gillespie (17,204), Glasscock (1,447), Irion (1,629), Kendall (14,589), Kerr (36,304), Kimble (4,122), Llano (11,631), Mason (3,423), Menard (2,252), Real (2,412), Schleicher (2,990), Sterling (1,438) and the following split counties: Bexar (165,040), Comal (38,679), Guadalupe (38,818), McCulloch (1,100), Midland (31,453), Tom Green (45,712), Williamson (112,735).

Congressional District 22 Tom DeLay (R)
is composed of the following split counties: Brazoria (132,288), Fort Bend (177,999), Harris (255,930).

Congressional District 23 Albert Bustamante (D)
is composed of the following whole counties: Brewster (8,681), Crane (4,652), Crockett (4,078), Culberson (3,407), Dimmit (10,433), Edwards (2,266), Hudspeth (2,915), Jeff Davis (1,946), Kinney (3,119), Loving (107), Maverick (36,378), Medina (27,312), Pecos (14,675), Presidio (6,637), Reagan (4,514), Reeves (15,852), Sutton (4,135), Terrell (1,410), Upton (4,447), Uvalde (23,340), Val Verde (38,721), Ward (13,115), Webb (133,239), Winkler (8,626), Zavala (12,162) and the following split counties: Bexar (95,091), Ector (34,344), El Paso (25,393), Midland (25,222).

Congressional District 24 Martin Frost (D)
is composed of the following whole counties: Navarro (39,926) and the following split counties: Dallas (233,888), Ellis (57,213), Tarrant (235,190).

Congressional District 25 Mike Andrews (D)
is composed of the following split counties: Fort Bend (47,422), Harris (518,795).

Congressional District 26 Richard Armey (R)
is composed of the following split counties: Collin (73,977), Dallas (292,668), Denton (195,396), Tarrant (4,176).

Congressional District 27 Solomon Ortiz (D)
is composed of the following whole counties: Cameron (260,120), Kenedy (460), Nueces (291,145) and the following split counties: Kleberg (10,925) and Willacy (3,567).

Congressional District 28 (NEW DISTRICT)
is composed of the following whole counties: Atascosa (30,533), Duval (12,918), Frio (13,472), Jim Hogg (5,109), La Salle (5,254), McMullen (817), Starr (40,518), Wilson (22,650), Zapata (9,279) and the following split counties: Bexar (359,046), Comal (13,153), Guadalupe (26,055), Jim Wells (27,413).

Congressional District 29 (NEW DISTRICT)
is composed of the following split county: Harris (566,217).

Congressional District 30 (NEW DISTRICT)
is composed of the following split county: Collin (7,050), Dallas (557,218), Tarrant (1,949).

Plaintiff's Exhibit 6E1
Letter regarding
split-precincts in Harris County

Dated November 2, 1991

November 2, 1991

FEDERAL EXPRESS

Mr. John Dunne
Chief, Voting Section
Civil Rights Division
Department of Justice
P. O. Box 66128
Washington, D. C. 20035-6128

Re: State of Texas Congressional and Legislative Redistricting Plans; Comment under Section 5 of the Voting Rights Act

Dear Mr. Dunne:

The redistricting plans submitted by the State of Texas for congressional, state senatorial and state representative districts create unprecedented problems for Harris County, Texas in the drawing of voting precincts. The Commissioners Court of Harris County, which is responsible for drawing voting precincts, is concerned that the problems created by the redistricting plans may have an adverse affect on voter turnout, particularly in minority areas. Enclosed is a summary of the problem and a request for consideration. Please consider these comments in your review of each of the three plans. I am providing extra copies of this correspondence for that purpose.

Please call me if you have any questions in this regard. Thank you for your consideration of these matters.

Sincerely,

/s/

Rex D. VanMiddlesworth
Attorney for
Commissioners Court of
Harris County, Texas

THE EFFECT OF REDISTRICTING IN HARRIS COUNTY—VOTER CONFUSION AND NEEDLESS EXPENSE

I. Summary

The creation of new congressional, state senatorial and state representative districts in Harris County has raised unprecedented difficulties in preparing for the next county-wide election. Because state law requires that separate election precincts be created for each contiguous geographical area in which there is a different combination of congressional, state senatorial and state representative districts, Harris County, is faced with finding polling places and election officials for over 200 precincts that contain no public buildings and few, if any, registered voters. In addition, numerous existing precincts will be splintered so that voters who have historically all gone to one church or school to cast their votes will now be scattered to as many as nine different locations. Such a system will lead to voter confusion and decreased voter participation. The problem is most severe in areas with substantial minority populations, and it will inevitably make it more difficult for minority voters to exercise their franchise.

II. The 1991 Redistricting Process

The Texas legislature has recently adopted new district lines for congressional, state senatorial and state representative districts to account for population shifts reflected in the 1990 census.[1] District lines have been drawn to achieve certain policy objectives, including the creation of

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[1] All three redistricting plans have been submitted to the United States Department of Justice for preclearance. As of this writing, the Justice Department has not issued its decision on any of the plans. In addition, litigation is pending both in Washington, D.C. and in Austin, Texas regarding all three plans.

districts in which racial and language minorities may have a substantial impact on elections. This has resulted in a number of oddly-shaped, sprawling districts. It should be emphasized that Harris County does not object to the policy objectives behind the legislature's redistricting plans, nor does it object to the creation of electoral districts that further these objectives. The difficulty lies in the fact that the congressional, state senatorial and state representative districts were drawn without any apparent regard for each other. There has been no attempt to coordinate the three plans. Thus, the dividing line for two congressional districts may be parallel to and a block away from the dividing line for two state senatorial districts, which may in turn be a block or two away from the dividing line for two state representative districts. The result is a crazy-quilt precinct pattern.

III. Drawing Precinct Lines in Harris County

The Texas Election Code requires that no county election precinct contain territory from more than one of each of the following districts:

1. a county commissioners precinct;
2. a justice precinct;
3. a congressional district;
4. a state representative district;
5. a state senatorial district;
6. a ward in a city with a population of 10,000 or more; or
7. a state Board of Education district.

Tex. Elec. Code Ann. § 42.005(a) (Vernon Supp. 1991). Thus, the initial step in establishing election precincts is to compare the district lines for each type of office to determine every contiguous geographical area that will have a unique

ballot. Each such geographical area must be a separate election precinct.[2]

Historically, census data has not been broken down beyond the census tract level. The data collected during the 1990 census, however, enabled the Bureau of the Census to identify the location of racial and language groups on a block-by-block basis. In redrawing congressional, state senatorial and state representative district lines, therefore, the Texas legislature this year was able to create minority impact districts by cutting across traditional neighborhood and election precinct boundaries to group together individual blocks with high concentrations of minority residents. Thus, a neighborhood that had traditionally been a part of a single state representative district may now be split into three or four districts. The same phenomena has occurred with congressional and state senatorial lines, and there has been no attempt to coordinate the line-drawing for the various districts. For example, one state representative district (the smallest of the three types of districts) extends into five of Harris County's six senatorial districts and three separate congressional districts, creating a minimum of sixty-eight precincts. As a result of the proposed redistricting plans, the number of different ballot combinations in Harris County has gone from 142 in the 1990 general election to 366, an increase of more than 250%. Under these plans, Harris County is faced with an unprecedented number of small "pocket precincts"[3] and a patch-work precinct scheme that

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[2] Some such geographical areas will necessarily be divided into several election precincts. State law requires that there be no more than 3,000 registered voters in any one precinct. Tex. Elec. Code Ann. § 42.006 (Vernon Supp. 1991).

[3] For purposes of this memorandum, the term "pocket precinct" refers to those election precincts with less than 100 voters. This is not meant to imply that a precinct of 100 voters is satisfactory from an administrative standpoint. Such a precinct still creates substantial administrative difficulties and the potential for voter confusion.

will be confusing to voters and virtually impossible to administer.

Under the current redistricting plans, Harris County would be required to create at least 240 precincts with less than 100 registered voters. Of these 240 precincts, 141 have less than twenty voters and sixty-two currently have no registered voters whatsoever. In addition, Harris County, which currently has 672 election precincts, would be required to administer an election with over 1000 precincts. In each precinct, no mater how small, a handicapped-accessible polling place must be found or built, voting machines must be delivered, election judges from within the precinct and election clerks must be appointed, and various controls to maintain the security of the election must be implemented. In many of the newly created precincts, there are no public buildings in which an election could be held.

Attachment "A" hereto is a map of the currently-existing Harris County Precinct 607. As can be seen from that map, residents of Precinct 607, who formerly voted at Frost Elementary School, will now have to vote in nine different precincts. One of the precincts would contain only seven registered voters. A voter in Precinct 607 who makes the mistake of going to the place where he has voted for the past ten years will be turned away. In order to exercise his right to vote, he will be required to find the proper polling place among the eight new polling places in Precinct 607. That voter, his neighbors across the street, those one block north of him, and those one block south of him may all be directed to different polling places, some of which may be in private residences or temporary buildings. It is certainly foreseeable that some voters may venture to several of the polling places in their neighborhood before finding the proper location, giving up, or running out of time. The confusion will inevitably discourage a large number of

voters. As with many of the badly splintered precincts, Precinct 607 has a heavy concentration of minority voters.

Obviously, this is not the first time that redistricting has caused changes in precinct lines, and Harris County does not object to making necessary changes. However, there has never before been a wholesale breaking down of existing precincts into small pockets. Unfortunately, the fractionalization is most severe in areas in which there are substantial minority populations, and the likely effect will be to discourage minority voting.

The problems involved in the establishment of new precincts are not merely administrative difficulties. Rather, they are problems of a constitutional dimension. The United States Supreme Court has held that the location, prominence and accessibility of polling places directly affect a person's right to vote, implicating guarantees protected by the United States Constitution and the Voting Rights Act. The Court stated:

> The abstract right to vote means little unless the right becomes a reality at the polling place on election day. The accessibility, prominence, facilities, and prior notice of the polling place's location all have an effect on a person's ability to exercise his franchise.

Perkins v. Matthews, 400 U.S. 379, 387, 91 S. Ct. 431, 436 (1971); see also Brown v. Dean, 555 F. Supp. 502 (D.R.I. 1982). Harris County is concerned that the election precinct configuration resulting from the proposed redistricting plans may adversely affect voters' ability to exercise their franchise to such an extent that it violates the United States Constitution and the Voting Rights Act.

IV. The Remedy

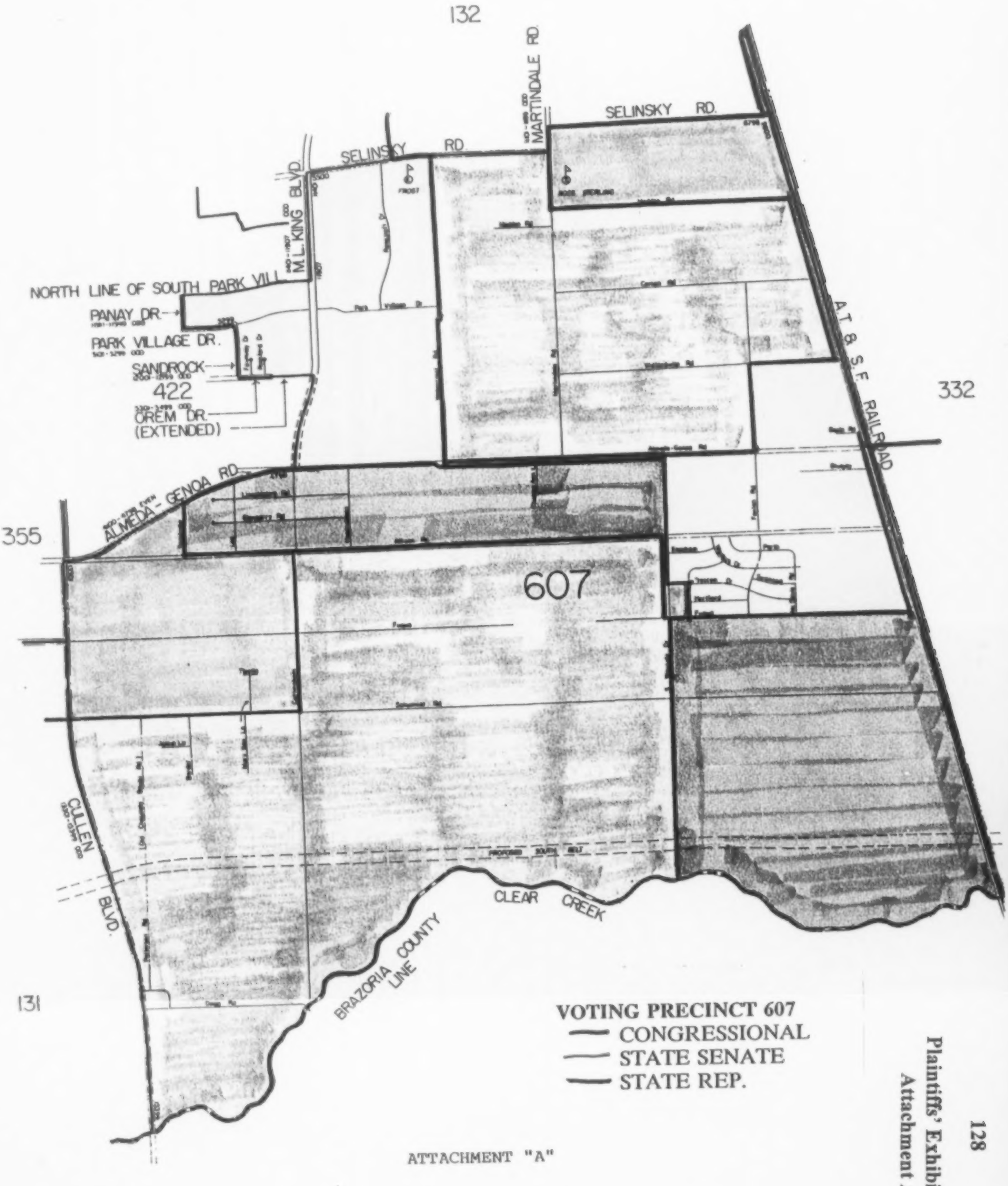
If there is to be any redrawing of congressional, state senatorial or state representative district lines, it should be done with an eye toward minimizing voter confusion. A large number of pocket precincts could be eliminated with little or no impact on the composition of the affected districts. Harris County requests that the Department of Justice and the federal courts considering the Texas Legislature's redistricting proposals attempt to coordinate any redrawing of the district lines to eliminate unnecessary fractionalization of election precincts. Harris County also asks that it be permitted to work with the various parties to address the problem in a responsible way.

A second alternative (in the event that there is no redrawing of congressional, state senatorial or state representative district lines) would be to permit Harris County to combine precincts so that residents of an area could all go to the same public building to vote. Separate voting machines and ballot cans could be made available at that voting place for residents of each geographical area in which there is a unique ballot. While this system will require the election judges to exercise care to make sure that each voter gets the right ballot, it will at least make it feasible to administer the election in a rational way. Harris County would not be faced with finding buildings and election judges for precincts of less than 20 registered voters. At present, such a combination of precincts is prohibited by State law, and Harris County would require judicial authorization to combine precincts.

V. Conclusion

It is ironic that the efforts of the Texas legislature to create districts that comply with the equal protection clause and the Voting Rights Act have resulted in a system which

will inevitably discourage minority voting in the state's largest urban area. In some cases, voters will be asked to locate the proper voting place from among as many as nine voting places that have sprung up in their existing precinct. Further, many of these voting places will be in obscure locations because of the absence of public buildings. Obviously, this result was neither foreseen nor intended at the time that the districts were created. Nonetheless, it is a real problem and it must be remedied. Harris County requests that steps be taken in order to minimize voter confusion and to allow the election to go forward under a workable precinct system.



ATTACHMENT "A"

Plaintiffs' Exhibit 6E1
Attachment A

Plaintiffs' Exhibit 013D

Data for 1991
Redistricting in Texas

Prepared by the Staff
of the
Texas Legislative Council

Published by the
Texas Legislative Council
Austin, Texas

Lieutenant Governor Bob Bullock, Chairman
Speaker Gibson D. (Gib) Lewis, Vice-Chairman
Robert I. Kelly, Executive Director
June 1992

INTRODUCTION

Data

Three basic types of data are used in the redistricting process: population, geographic, and election data. This publication describes the different data that the Texas Legislative Council provides for redistricting, reviews the methods used to produce the data, and gives a brief explanation of factors to keep in mind when using the data. It also describes how access to the data is provided.

The population data is from the 1990 unadjusted decennial census and includes total population and voting age population by race and ethnicity for the state and for counties, census tracts, census blocks, and voting tabulation districts (VTDs).

The geographic data includes the geographic boundaries of the state and of counties, census tracts and block numbering areas (BNAs), and census blocks provided by the census bureau, 1984-1990 county voting precincts provided by the secretary of state and county officials, and VTDs, which are groupings of census blocks that approximate, as nearly as possible, county voting precincts. VTDs were derived by council staff in a project sponsored by the census bureau to provide the link between population data, which is reported by census block, and election data, which is reported by voting precinct.

The election data includes information about candidates and election returns, voter registration, and voter turnout compiled by the legislative council from material provided by the secretary of state and county and city election officials.

Redistricting data is available to members of the legislature and their staffs and sponsored interest groups through the redistricting computer systems in members' Capitol offices or through the Texas Legislative Council offices in the John H. Reagan Building. Maps and reference materials may be obtained through council offices and the document distribution offices of both houses. Data prepared for the redistricting project is available in electronic format from the State Data Center. Charges for the data are determined by costs of reproduction and of any special processing required.

Information about specific district proposals is available only after the author of the proposal makes it public. Council staff places the same high priority on protecting the confidentiality of all redistricting proposals as is afforded bill drafts.

Computer System

The redistricting computer system for the Texas Legislature has four major components: the Population Analysis System (PAS), a simple district modeling application that is available in members' Capitol offices; REDAPPL, a sophisticated graphic district modeling application that is available on workstations in the council redistricting offices; and the Plan Analysis Report system (PAR), a tool for producing detailed reports and the map production system, MAPS, which are operated by council staff to produce paper reports and maps on request.

The legislative redistricting computer system is available to all members of the legislature and their staffs and to groups and individuals sponsored by members of the legislature.

[18]

* * * *

Spanish Surname Voter Registration

The following Spanish surname voter registration data has been collected for the redistricting project. Not all collected data has been computerized, for reasons discussed below.

1. 1984 elections—from report compiled by the secretary of state on January 7, 1984; not computerized.

2. 1986 elections—from report compiled by the secretary of state on July 25, 1986; not computerized.

3. 1988 elections—from report compiled by the secretary of state on July 17, 1988.

4. 1989 city elections—from report compiled by the secretary of state on November 3, 1989.

5. 1990 primaries—from report compiled by the secretary of state on March 30, 1990.

6. 1990 general election—from report compiled by the secretary of state on November 1, 1990.

The number of registered voters with Spanish surnames is available from a computer comparison of names on the State Master File of Registered Voters maintained by the secretary of state with a list of Spanish surnames compiled by the census bureau. Except for this estimate of Hispanic voter registration, the number of Hispanic or Black registered

voters is not available from any official source and must be derived from collected data.

The reports of total and Spanish surname voter registrations provided by the secretary of state for 1984-1989 were compiled at various times during those years and not in association with any election. In 1990, Spanish surname voter registration reports were produced in March and November to correspond to the times of the 1990 elections.

The Spanish surname reports for 1984 and 1986 showed major discrepancies between the voter registration totals for counties and precincts reported from the secretary of state's master file and those reported by counties. The lists of precincts in the voter registration reports from the two sources also showed significant differences. For these reasons, Spanish surname voter registration information for 1984 and 1986 is not included in TED. The secretary of state began working to reconcile state master file and county registration statement discrepancies in 1987. Although substantial differences still remained in the precinct lists and the voter registration totals in 1988, the 1988 Spanish surname data for valid voting precincts is included in TED. Continued work by the secretary of state has further improved the data for 1990. Although problems still exist, the 1990 voter registration reports from the two sources correlate more closely in their total voter registration and lists of voting precincts. Reports documenting problems are on file in council offices.

While most knowledgeable sources agree that the match between people who have Spanish surnames and those who consider themselves Hispanic is relatively good in Texas (a census bureau comparison in 1984 indicated that there was a 90 percent correlation for the state), the reported numbers for Spanish surname voters are not a precise measure of Hispanic voter registration. Some people consider

themselves Hispanic but do not have surnames that are included in the Spanish surname file. These will be missed by the Spanish surname match estimating technique. Some people have surnames that are included in the Spanish surname file but do not consider themselves Hispanic. These people will be incorrectly counted as Hispanic registered voters. The technique of estimating Hispanic voter registration through a Spanish surname match with the secretary of state's master file may result in a net undercount of Hispanic registered voters of about 10 percent statewide. No attempt was made to correct the net undercount because there is insufficient data to estimate the relative undercount for different counties or subcounty areas, and it is unlikely that the error rates are uniform across the state.

The voter registration totals on the state master file do not match the totals on the county voter registration reports, which are considered by election officials to be more accurate. Council staff applied the percentage of voters with Spanish surnames derived from the state master file to the county voter registration totals to calculate Spanish surname voter registration totals for PAR reports, but the data appears in TED as it was reported. As a result, differing total voter registration figures obtained from the two sources are found in TED.

[22]

* * * *

Allocation of Data to Split VTDs

Because so many of the district proposals considered by the legislature split VTDs, some data in PAR is reported both for that part of the district made up of whole VTDs and for all areas in a district. To estimate data for split VTDs, the data is allocated to the block level on the basis of voting age population and is then reaggregated to the part of the VTD in the district. The data is not reported by split VTD, but only as a part of the whole district total.

For votes, total voter registration, and turnout, allocation is based on the percentage of the total voting age population of the split VTD that is in the district according to the following formula: for each split VTD, the total voting age population that is both in the VTD and in the district is divided by the total voting age population in the VTD, and the result is multiplied by the total votes cast for each candidate, total voter registration, or total turnout in the VTD. The underlying assumption in this formula is that voting and registration patterns in different parts of a VTD are the same. If VTDs were split to select areas that are known or assumed to have different voting or registration patterns, the allocation can result in misleading information. To illustrate, a new congressional district with more than 50 percent Black population was created in Dallas County by splitting VTDs and selecting blocks with high Black populations. Allocation of election data to these blocks, however, is made on the basis of total voting age population. Blocks with the same number of voting age people will be allocated the same number of votes for each candidate, the same number of registered voters, and the same turnout, even when one block is predominantly Black and the other is

predominantly Anglo. The allocation will be made as if minority and Anglo voting and registration patterns are the same, regardless of whether blocks are selected for exclusion or inclusion in a district on the presumption that minority and Anglo voting or registration patterns are different.

Because 1990 Spanish surname voter registration is available, special calculations are made to allocate 1990 voter registration to split VTDs. Spanish surname and non-Spanish surname voter registration figures are calculated first. Spanish surname voter registration is then allocated according to the following formula: Hispanic voting age population that is both in the VTD and in the district is divided by the Hispanic voting age population in the whole VTD and the result is multiplied by the Spanish surname voter registration in the VTD to give the Spanish surname voter registration for that part of the VTD in the district. The non-Spanish surname voter registration is then allocated according to the following formula: non-Hispanic voting age population that is both in the VTD and in the district is divided by non-Hispanic voting age population in the whole VTD and the result is multiplied by the non-Spanish surname voter registration in the VTD to give the non-Spanish surname voter registration for that part of the VTD in the district. The two totals (Spanish surname and non-Spanish surname voter registration) are then added to give the total voter registration in the part of the VTD that is in the district.

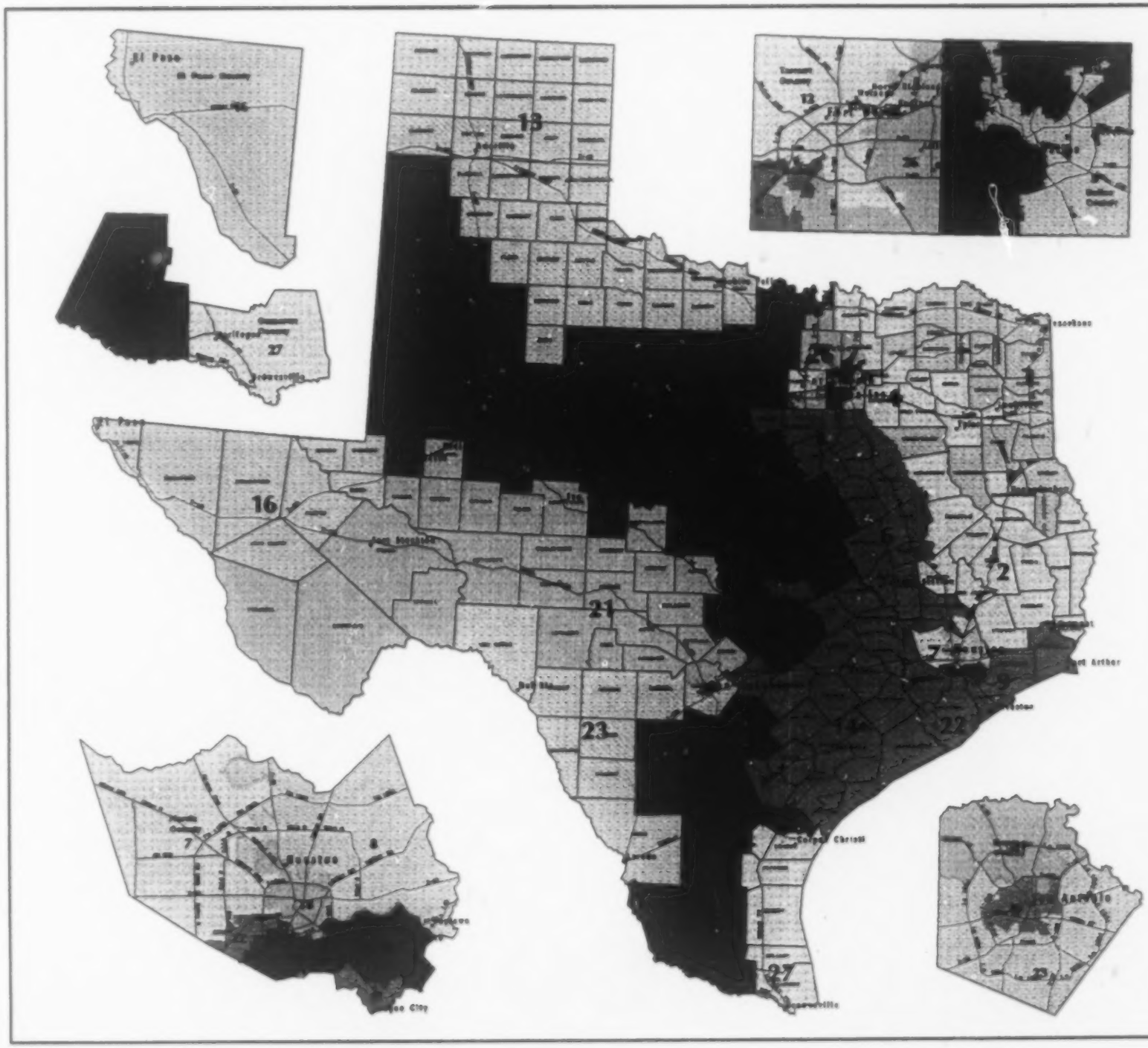
Plaintiff's Exhibit 14K

TABLE 7

AFRICAN-AMERICAN SUCCESS IN TEXAS
LEGISLATIVE DISTRICTS
BY PERCENT BLACK, 1983 - 1992

Year	50% +	45-49.9	40-44.9	35-39.9	30-34.9
1983	100%	50%	--	50%	50%
	(10)	(2)		(4)	(2)
1985	100	50	--	50	50
	(10)	(2)		(4)	(2)
1987	100	100	--	50	50
	(9)	(3)		(4)	(2)
1989	100	100	100	75	50
	(9)	(2)	(1)	(4)	(2)
1991	100	100	100	67	50
	(10)	(1)	(2)	(3)	(2
1983-91	100	80	100	58	50
	(48)	(10)	(3)	(19)	(10)

Plaintiffs' Exhibit 28A



TEXAS
U.S. Congressional Districts
102nd Congress
(PLANC001)

LEGEND

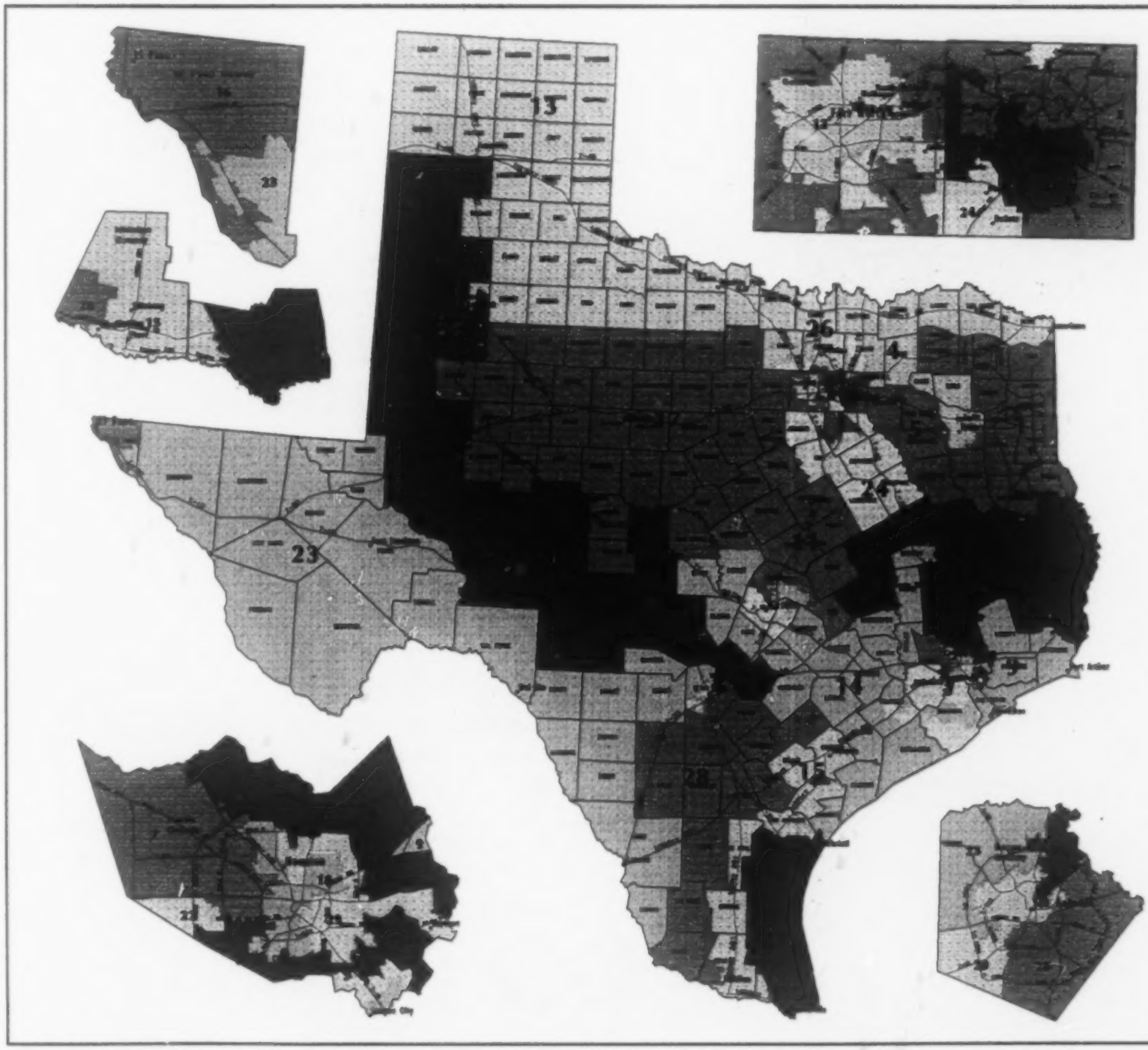
County Boundaries
Congressional Districts 99

PLANC001

SPE001
Scale 1 : 4825637
1 inch = 76.16 miles
August 04, 1995 8:07 AM

TEXAS LEGISLATIVE COUNCIL

Plaintiffs' Exhibit 29A



TEXAS

Proposed Congressional Districts

(PLANC500)

1990 Census Population Totals

District	Total	Angle	Black	Hispanic	B+H	Other
		<-------percent of total				------>
1	585,538	75.6	19.4	4.2	23.5	0.8
2	585,911	77.0	14.8	7.0	21.8	1.4
3	586,422	78.2	6.7	10.9	17.4	4.4
4	586,021	81.8	13.3	4.0	17.3	1.0
5	587,151	68.0	12.3	17.5	29.4	2.6
6	588,027	82.4	6.1	8.3	14.3	3.3
7	588,040	71.7	7.1	16.6	23.4	4.8
8	588,700	81.8	7.7	8.6	16.4	1.8
9	587,107	66.9	22.3	9.4	31.4	2.0
10	588,734	64.0	11.0	21.2	31.0	3.2
11	588,604	70.1	16.0	12.3	27.0	1.0
12	588,547	73.0	6.6	15.0	24.4	2.6
13	588,540	73.6	7.3	17.1	24.2	2.0
14	588,603	69.5	10.7	18.0	28.4	1.2
15	588,502	26.9	1.4	72.3	73.5	0.5
16	588,594	26.3	3.0	68.7	72.3	1.4
17	588,566	82.1	3.1	14.0	17.0	0.9
18	588,564	30.1	48.9	20.9	67.1	2.8
19	588,588	70.6	3.4	25.0	28.3	1.1
20	588,652	31.9	7.1	60.3	67.1	1.5
21	588,538	71.8	4.2	22.9	27.0	1.2
22	588,574	70.6	7.6	15.9	23.4	5.0
23	588,513	34.6	1.8	62.5	64.2	1.2
24	588,574	60.4	10.2	9.4	29.4	2.2
25	588,487	48.4	24.7	19.9	44.0	6.6
26	588,484	66.4	4.1	6.3	10.4	3.2
27	588,280	30.7	2.6	66.1	68.4	0.9
28	588,481	34.1	6.2	59.0	65.0	1.0
29	588,271	37.9	13.1	47.6	60.1	2.0
30	588,493	31.8	44.0	23.5	66.6	1.7

LEGEND

County Boundaries ———— ▭

Proposed Districts 99

PLANC500
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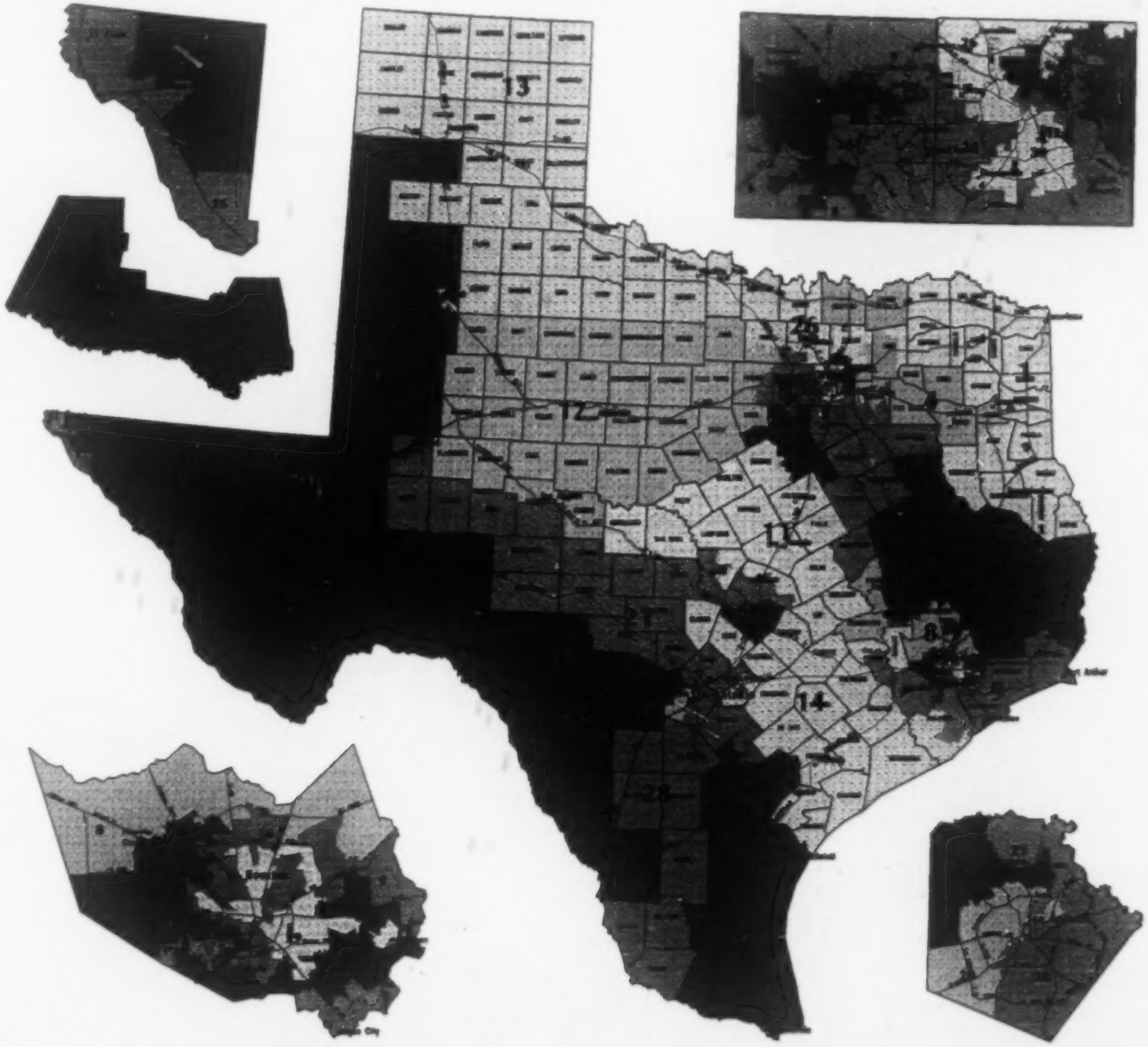
August 04, 1995 11:36 AM

TEXAS LEGISLATIVE COUNCIL

Plaintiffs's Exhibit 31A



TEXAS

Proposed Congressional Districts

(PLANC525)

1990 Census Population Totals

District	Total	Percent of total: Anglo	Black	Hispanic	B+H	Other
1	566,217	77.4	18.8	3.3	21.8	0.7
2	566,217	77.6	19.8	2.0	21.8	0.7
3	566,217	85.5	4.8	6.3	11.0	3.5
4	566,217	81.8	12.9	4.6	17.3	0.9
5	566,217	84.6	15.0	17.8	33.1	2.3
6	566,217	88.6	3.8	9.4	8.0	2.5
7	566,217	75.0	6.2	13.3	19.3	5.7
8	566,217	83.0	5.5	8.4	14.8	2.2
9	566,217	58.3	22.4	9.4	31.8	2.2
10	566,217	64.5	11.1	21.4	32.2	3.2
11	566,217	80.6	15.0	13.0	28.5	1.0
12	566,217	73.0	9.4	18.4	25.7	2.3
13	566,217	73.4	7.4	17.6	24.8	1.8
14	566,217	84.8	11.0	20.6	34.2	0.9
15	566,217	20.0	0.8	76.9	77.4	0.5
16	566,217	25.1	3.8	70.2	73.8	1.3
17	566,217	80.5	3.4	15.3	18.8	0.8
18	566,217	28.6	50.3	17.8	67.3	3.1
19	566,217	71.9	3.0	23.9	26.9	1.2
20	566,217	38.1	9.4	58.2	63.2	1.6
21	566,217	79.5	3.8	15.9	20.2	1.3
22	566,217	69.2	7.8	18.1	23.7	7.1
23	566,217	37.6	1.9	59.5	61.3	1.2
24	566,217	56.0	20.1	21.0	40.8	3.2
25	566,217	52.7	20.7	18.1	43.1	4.1
26	566,217	85.2	4.2	7.1	11.2	3.6
27	566,217	30.7	2.6	66.1	68.4	0.9
28	566,217	31.2	8.7	59.9	67.8	1.0
29	566,217	31.8	10.9	55.7	66.0	2.2
30	566,217	36.3	43.3	18.5	61.2	2.5

LEGEND

County Boundaries

Proposed Districts 99

PLANC525
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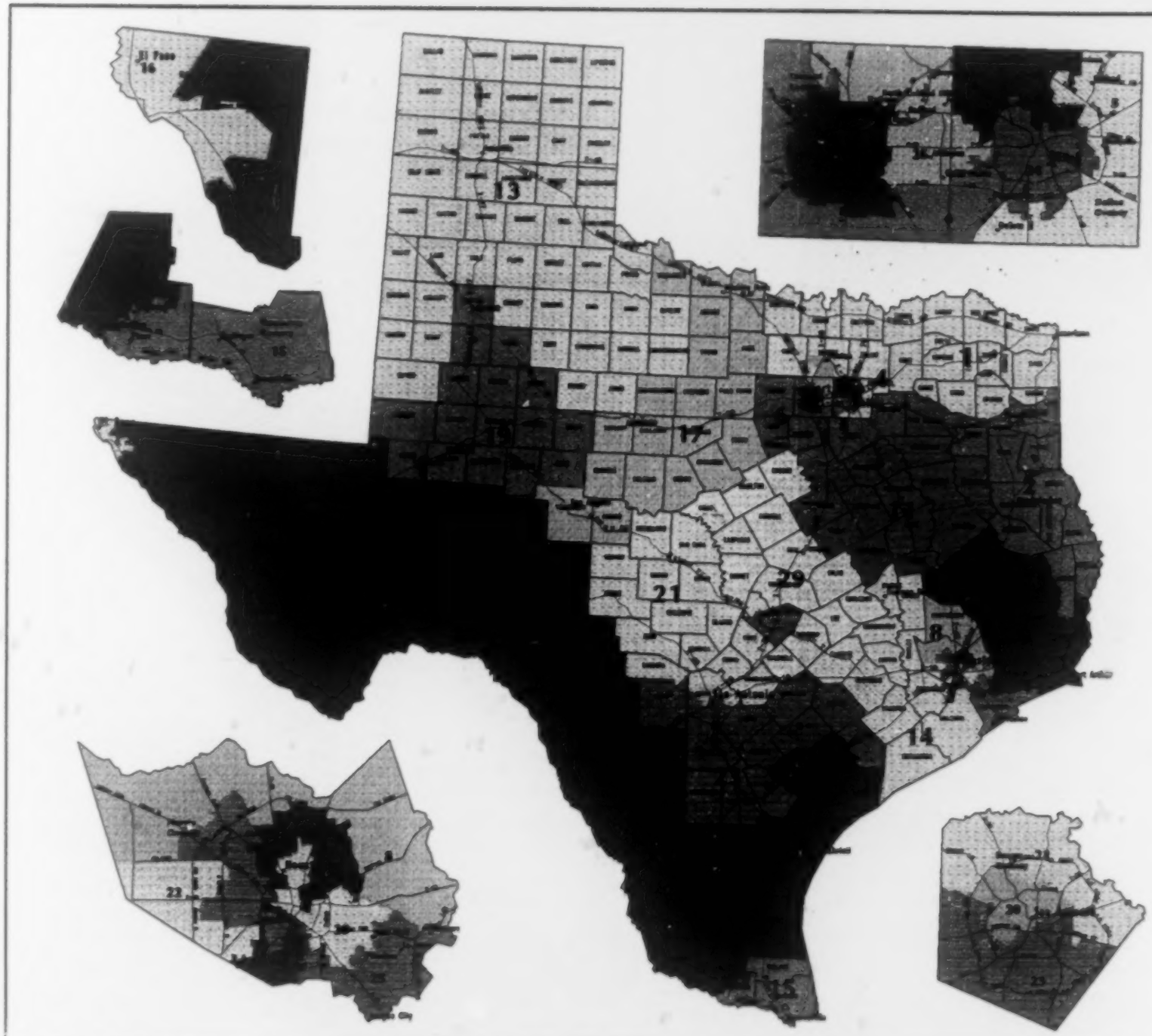
SPE363

August 03, 1995 6:40 PM

TEXAS LEGISLATIVE COUNCIL

Plaintiffs' Exhibit 32A(1)



TEXAS

Proposed Congressional Districts

(PLANC606)

1990 Census Population Totals

District	Total	Angle	Black	Hispanic	B+H	Other
		<--------percent of total-------->				
1	586,776	83.7	12.4	3.1	15.4	0.8
2	585,479	74.3	20.5	4.6	25.0	0.7
3	586,301	78.1	5.8	11.8	17.4	4.4
4	586,028	85.5	4.5	7.1	11.5	3.0
5	586,498	75.0	11.1	10.6	21.5	3.5
6	586,134	83.7	8.7	6.0	14.6	1.7
7	586,923	70.1	7.8	17.1	24.9	5.1
8	586,175	81.8	7.1	9.5	16.5	1.7
9	586,759	73.3	20.6	4.6	25.2	1.5
10	586,780	64.6	11.1	21.4	32.1	3.2
11	585,377	74.7	16.3	8.4	24.9	0.7
12	586,132	62.5	16.4	18.9	35.1	2.4
13	585,326	72.7	3.9	22.2	26.0	1.3
14	586,521	68.2	12.9	17.5	30.1	1.7
15	586,604	15.6	0.3	83.6	84.0	0.5
16	587,151	25.6	3.7	68.2	72.7	1.4
17	586,235	86.3	9.0	13.5	18.4	1.3
18	585,229	28.1	58.0	16.1	68.3	2.6
19	586,127	68.0	6.1	24.9	30.8	1.3
20	587,070	38.4	4.7	55.5	60.0	1.6
21	586,749	74.0	4.1	20.7	24.6	1.4
22	585,373	58.4	14.6	17.8	32.0	9.6
23	585,970	37.2	6.8	53.3	61.6	0.9
24	586,288	24.4	45.6	29.2	73.8	1.7
25	585,762	67.3	16.2	13.2	29.1	3.6
26	586,102	81.6	6.0	9.0	14.9	3.5
27	587,072	44.1	3.6	51.2	54.8	1.1
28	585,361	33.7	12.2	52.9	64.5	1.8
29	586,580	71.6	12.7	14.1	26.3	2.0
30	586,455	19.5	1.0	79.0	79.8	0.6

LEGEND

County Boundaries ———— mm

Proposed Districts 99

PLANC606
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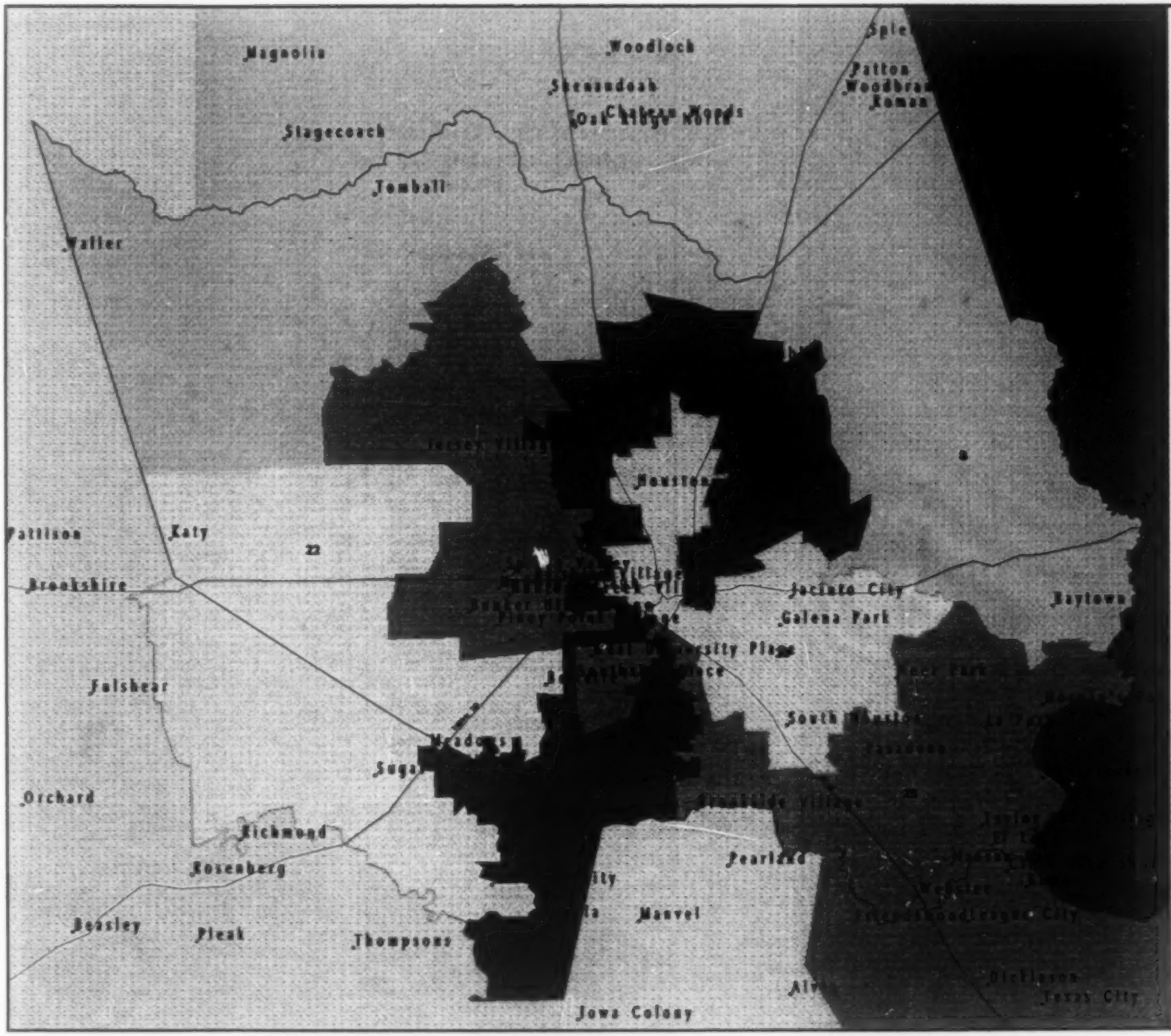
August 03, 1995 6:45 PM

TEXAS LEGISLATIVE COUNCIL

Plaintiffs' Exhibit 32A(2)



HARRIS COUNTY
Proposed Congressional Districts
(PLANC606)

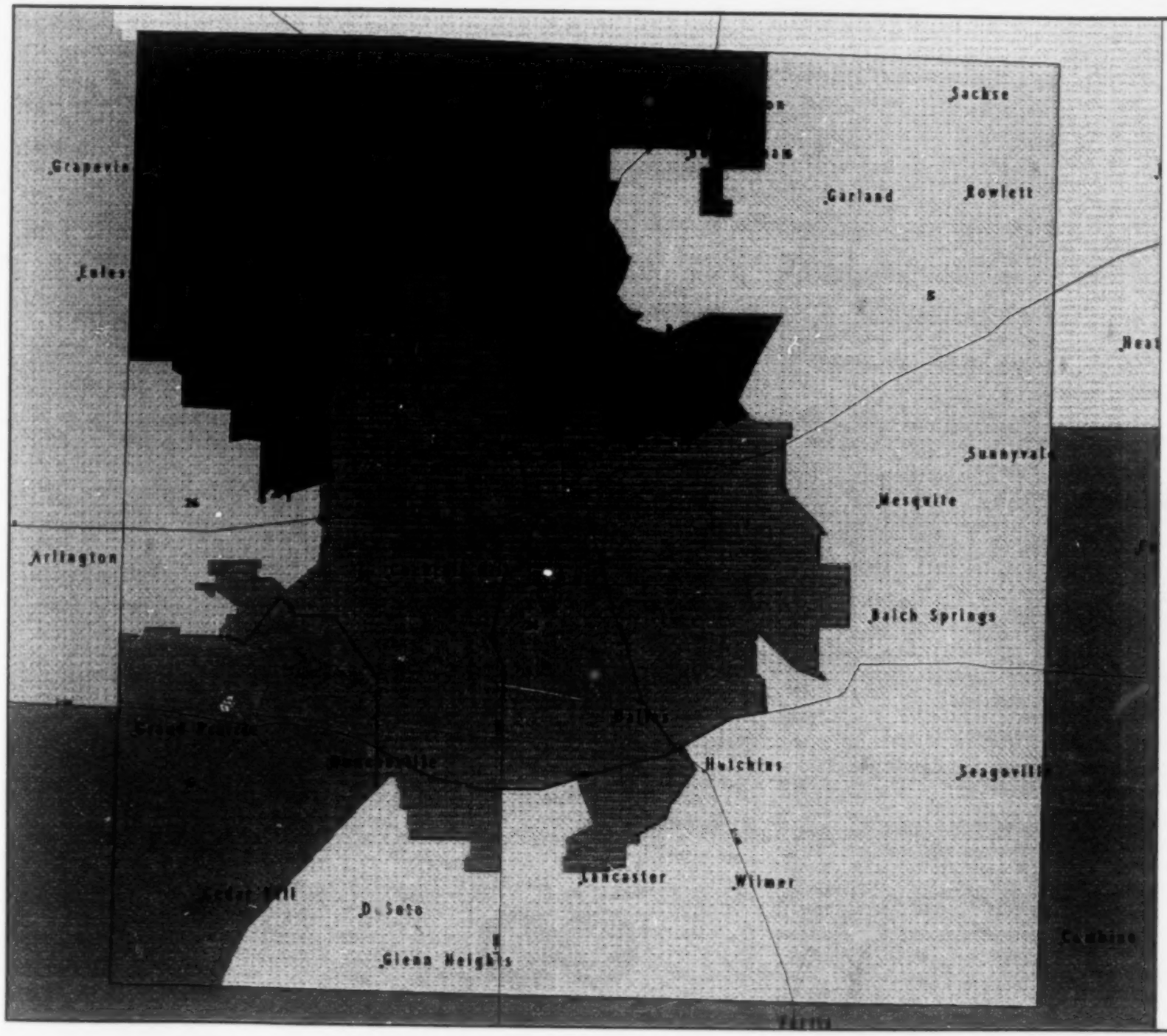
1990 Census Population Totals

		<——percent of total——>			
District	Total	Black	Hispanic	B&H	Other
1	566,776	12.4	3.1	15.4	0.9
2	565,479	20.5	4.6	25.0	0.7
3	566,301	5.8	11.8	17.4	4.4
4	566,028	4.5	7.1	11.5	3.0
5	566,496	11.1	10.6	21.5	3.5
6	566,134	6.7	8.0	14.6	1.7
7	566,933	7.9	17.1	24.8	5.1
8	565,175	7.1	9.5	16.5	1.7
9	566,755	20.6	4.8	25.2	1.5
10	566,760	11.1	21.4	32.1	3.2
11	565,377	16.3	8.4	24.5	0.7
12	566,132	18.4	16.9	35.1	2.4
13	565,325	3.9	22.2	25.9	1.3
14	566,521	12.9	17.5	30.1	1.7
15	566,804	0.3	83.6	84.0	0.5
16	567,151	3.7	69.2	72.7	1.4
17	566,235	5.0	13.5	18.4	1.3
18	565,229	53.0	16.1	68.3	2.6
19	566,127	6.1	24.9	30.8	1.3
20	567,070	4.7	55.5	60.0	1.6
21	566,749	4.1	20.7	24.6	1.4
22	565,373	14.6	17.8	32.0	9.6
23	565,970	8.9	53.3	61.8	0.9
24	566,298	45.6	29.2	73.9	1.7
25	565,762	16.2	13.2	29.1	3.6
26	566,102	6.0	9.0	14.9	3.5
27	567,072	3.8	51.2	54.8	1.1
28	565,361	12.2	52.9	64.5	1.8
29	566,560	12.7	14.1	26.3	2.0
30	566,455	1.0	79.0	79.9	0.6

PLANC606
08/19/91 13:33:12

TEXAS LEGISLATIVE COUNCIL

Plaintiffs' Exhibit 32A(3)



DALLAS COUNTY
Proposed Congressional Districts
(PLANC606)

1990 Census Population Totals

District	Total	Black	Hispanic	B&H	Other
		<——percent of total——>			
1	566,776	12.4	3.1	15.4	0.9
2	565,479	20.5	4.6	25.0	0.7
3	566,301	5.8	11.8	17.4	4.4
4	566,028	4.5	7.1	11.5	3.0
5	566,496	11.1	10.6	21.5	3.5
6	566,134	6.7	8.0	14.6	1.7
7	566,933	7.9	17.1	24.8	5.1
8	565,175	7.1	9.5	16.5	1.7
9	566,755	20.6	4.8	25.2	1.5
10	566,760	11.1	21.4	32.1	3.2
11	565,377	16.3	8.4	24.5	0.7
12	566,132	18.4	16.9	35.1	2.4
13	565,325	3.9	22.2	25.9	1.3
14	566,521	12.9	17.5	30.1	1.7
15	566,804	0.3	83.6	84.0	0.5
16	567,151	3.7	69.2	72.7	1.4
17	566,235	5.0	13.5	18.4	1.3
18	565,229	53.0	16.1	68.3	2.6
19	566,127	6.1	24.9	30.8	1.3
20	567,070	4.7	55.5	60.0	1.6
21	566,749	4.1	20.7	24.6	1.4
22	565,373	14.6	17.8	32.0	9.6
23	565,970	8.9	53.3	61.8	0.9
24	566,298	45.6	29.2	73.9	1.7
25	565,762	16.2	13.2	29.1	3.6
26	566,102	6.0	9.0	14.9	3.5
27	567,072	3.8	51.2	54.8	1.1
28	565,361	12.2	52.9	64.5	1.8
29	566,560	12.7	14.1	26.3	2.0
30	566,455	1.0	79.0	79.9	0.6

PLANC606
08/19/91 13.33.12

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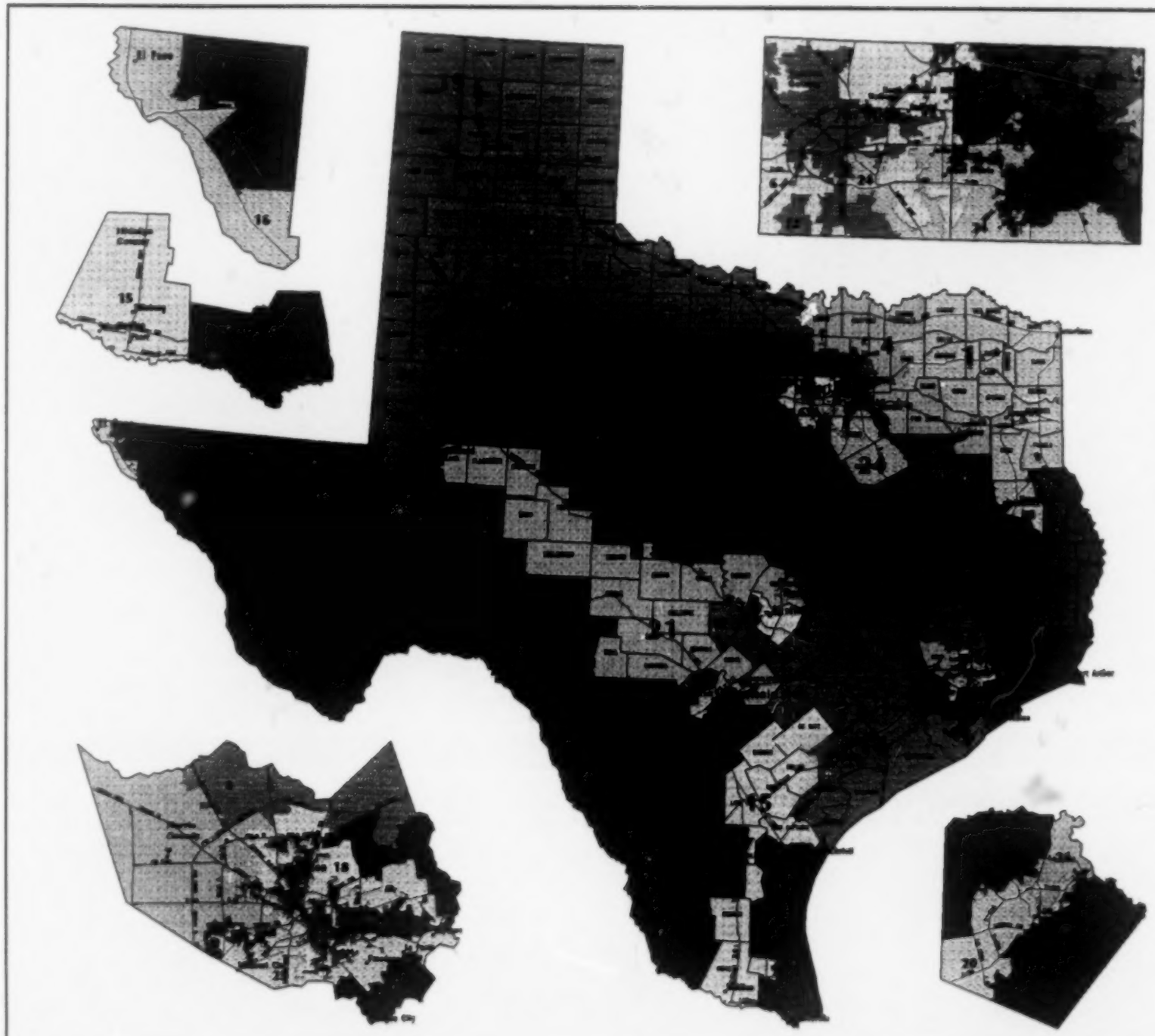
TEXAS LEGISLATIVE COUNCIL

Plaintiffs' Exhibit 34B(1)



TEXAS

U.S. Congressional Districts

103rd - 104th Congresses

(PLANC657)

1990 Census Population Totals

District	Total	Angle	Black	Hispanic	B+H	Other
		<--------percent of total-------->				
1	566,217	78.1	18.1	3.2	21.2	0.7
2	566,217	77.1	18.7	5.0	22.1	0.7
3	566,217	80.9	4.4	8.0	10.3	3.7
4	566,217	80.3	8.4	4.3	12.7	1.0
5	566,217	84.3	18.3	17.9	33.6	1.9
6	566,217	87.6	4.4	8.4	9.8	2.6
7	566,217	78.8	5.8	11.9	17.7	3.7
8	566,217	80.4	6.2	7.2	12.4	2.2
9	566,217	66.9	21.7	8.4	30.6	2.3
10	566,217	64.6	11.2	21.4	32.2	3.2
11	566,217	70.2	15.9	12.3	27.0	1.9
12	566,217	73.8	6.0	18.3	24.1	2.3
13	566,217	71.0	8.0	19.4	27.2	1.8
14	566,217	65.1	10.6	23.6	34.0	0.9
15	566,217	23.9	1.1	74.5	75.6	0.6
16	566,217	25.0	3.6	70.4	73.7	1.3
17	566,217	78.9	3.9	17.2	20.6	0.9
18	566,217	31.3	50.9	15.3	65.5	3.2
19	566,217	76.6	2.5	19.6	22.0	1.3
20	566,217	32.2	9.8	60.7	65.2	1.6
21	566,217	62.2	2.5	14.1	15.4	1.3
22	566,217	66.2	7.8	18.1	23.6	7.1
23	566,217	33.8	2.9	62.5	65.3	1.1
24	566,217	56.7	19.1	21.8	40.8	2.7
25	566,217	53.0	26.9	18.7	43.0	4.0
26	566,217	62.4	4.2	9.2	13.2	4.3
27	566,217	30.7	2.4	66.2	68.4	0.9
28	566,217	30.4	6.5	60.4	66.5	1.0
29	566,217	23.0	10.2	60.6	70.2	2.0
30	566,217	31.4	50.0	17.1	66.3	2.4

LEGEND

County Boundaries ———— 99

Congressional Districts 99

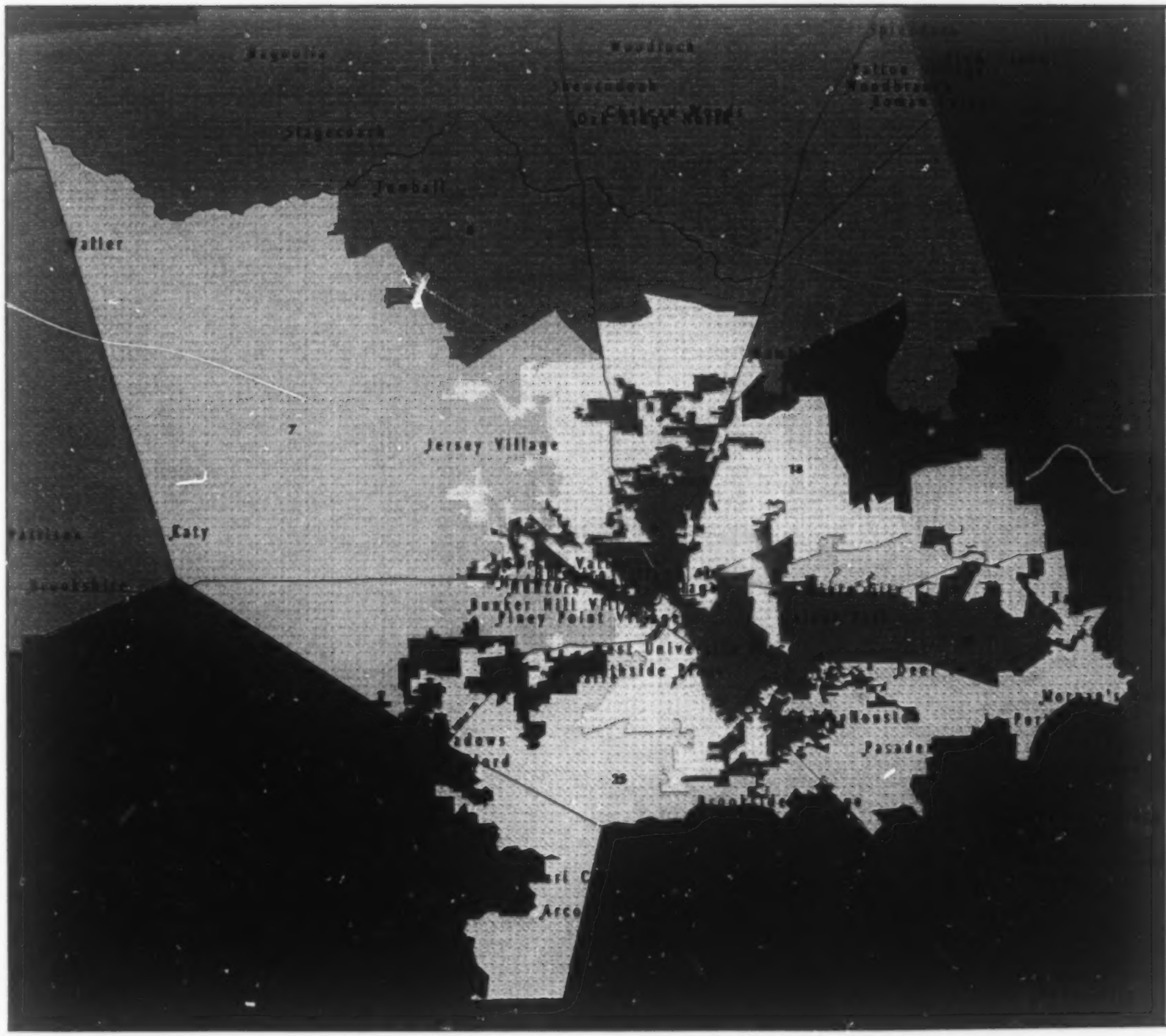
PLANC657
10/10/91 17:23:06

SPE303

August 04, 1995 3:32 PM

TEXAS LEGISLATIVE COUNCIL

Plaintiffs' Exhibit 34B(2)



HARRIS COUNTY

U.S. Congressional Districts

103rd - 104th Congresses

(PLANC657)

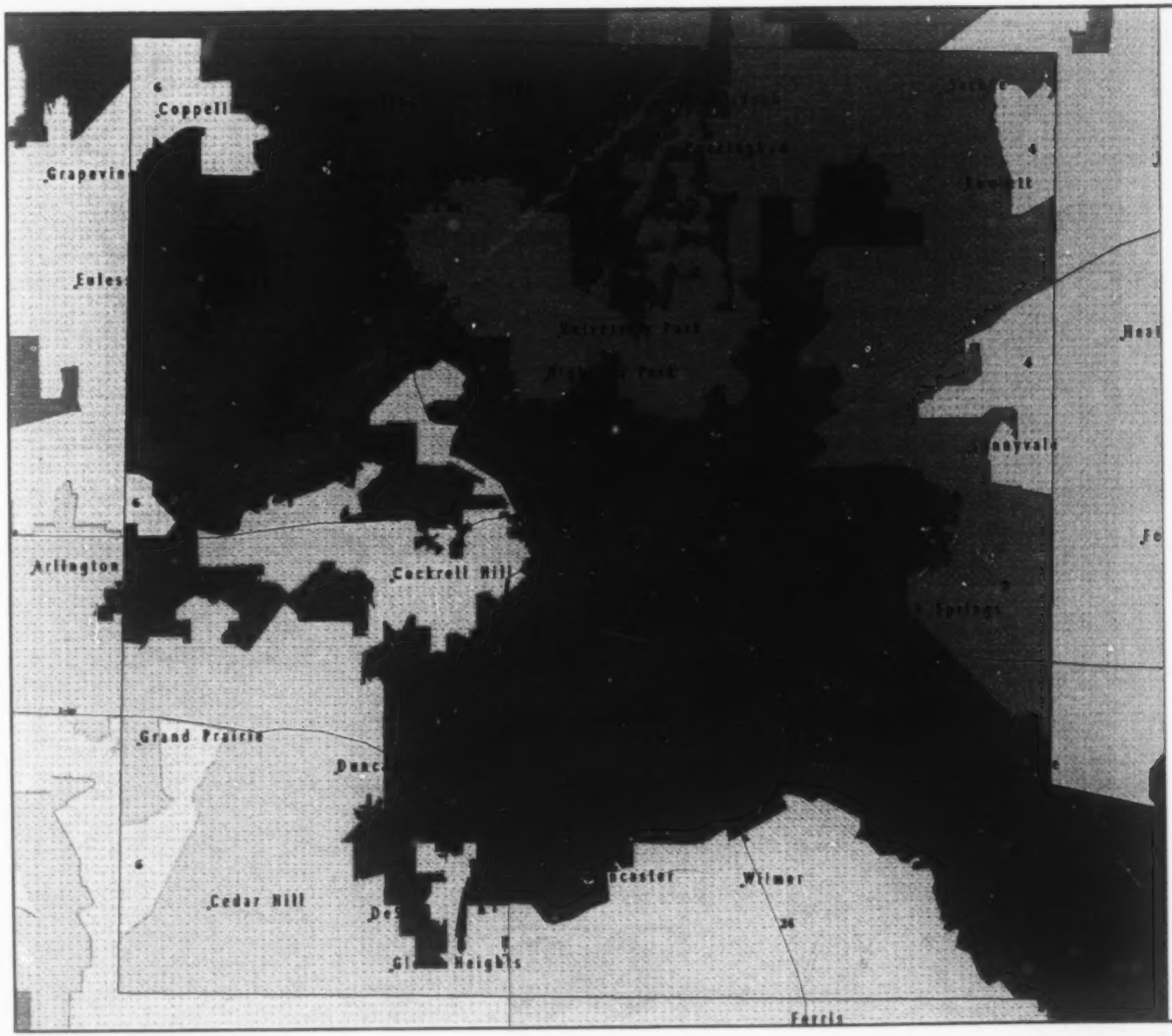
1990 Census Population Totals

		<——— percent of total ———>			
District	Total	Black	Hispanic	B&H	Other
1	566,217	18.1	3.2	21.2	0.7
2	566,217	16.7	5.6	22.1	0.7
3	566,217	4.4	6.0	10.3	3.7
4	566,217	8.4	4.3	12.7	1.0
5	566,217	16.3	17.9	33.8	1.9
6	566,217	4.4	5.4	9.8	2.6
7	566,217	5.9	11.9	17.7	5.7
8	566,217	5.2	7.2	12.4	2.2
9	566,217	21.7	9.4	30.8	2.3
10	566,217	11.2	21.4	32.2	3.2
11	566,217	15.9	12.3	27.9	1.9
12	566,217	8.0	16.3	24.1	2.3
13	566,217	8.0	19.4	27.2	1.8
14	566,217	10.6	23.6	34.0	0.9
15	566,217	1.1	74.5	75.5	0.6
16	566,217	3.6	70.4	73.7	1.3
17	566,217	3.5	17.2	20.6	0.9
18	566,217	50.9	15.3	65.5	3.2
19	566,217	2.5	19.6	22.0	1.3
20	566,217	5.8	60.7	66.2	1.6
21	566,217	2.5	14.1	16.4	1.3
22	566,217	7.8	16.1	23.6	7.1
23	566,217	2.9	62.5	65.3	1.1
24	566,217	19.1	21.8	40.6	2.7
25	566,217	26.9	16.7	43.0	4.0
26	566,217	4.2	9.2	13.2	4.3
27	566,217	2.4	66.2	68.4	0.8
28	566,217	8.5	60.4	68.6	1.0
29	566,217	10.2	60.6	70.2	2.0
30	566,217	50.0	17.1	66.3	2.4

PLANC657

TEXAS LEGISLATIVE COUNCIL

Plaintiffs' Exhibit 34B(3)



DALLAS COUNTY

U.S. Congressional Districts

103rd - 104th Congresses

(PLANC657)

1990 Census Population Totals

		<——percent of total——>			
District	Total	Black	Hispanic	B&H	Other
1	566,217	18.1	3.2	21.2	0.7
2	566,217	16.7	5.6	22.1	0.7
3	566,217	4.4	6.0	10.3	3.7
4	566,217	8.4	4.3	12.7	1.0
5	566,217	16.3	17.9	33.8	1.9
6	566,217	4.4	5.4	9.8	2.6
7	566,217	5.9	11.9	17.7	5.7
8	566,217	5.2	7.2	12.4	2.2
9	566,217	21.7	9.4	30.8	2.3
10	566,217	11.2	21.4	32.2	3.2
11	566,217	15.9	12.3	27.9	1.9
12	566,217	8.0	16.3	24.1	2.3
13	566,217	8.0	19.4	27.2	1.8
14	566,217	10.6	23.6	34.0	0.9
15	566,217	1.1	74.5	75.5	0.6
16	566,217	3.6	70.4	73.7	1.3
17	566,217	3.5	17.2	20.6	0.9
18	566,217	50.9	15.3	65.5	3.2
19	566,217	2.5	19.6	22.0	1.3
20	566,217	5.8	60.7	66.2	1.6
21	566,217	2.5	14.1	16.4	1.3
22	566,217	7.8	16.1	23.5	7.1
23	566,217	2.9	62.5	65.3	1.1
24	566,21[illegible]	19.1	21.8	40.6	2.7
25	566,217	26.9	16.7	43.0	4.0
26	566,217	4.2	9.2	13.2	4.3
27	566,217	2.4	66.2	68.4	0.8
28	566,217	8.5	60.4	68.6	1.0
29	566,217	10.2	60.6	70.2	2.0
30	566,217	50.0	17.1	66.3	2.4

PLANC657
10/10/91 17:23:08

SPE503
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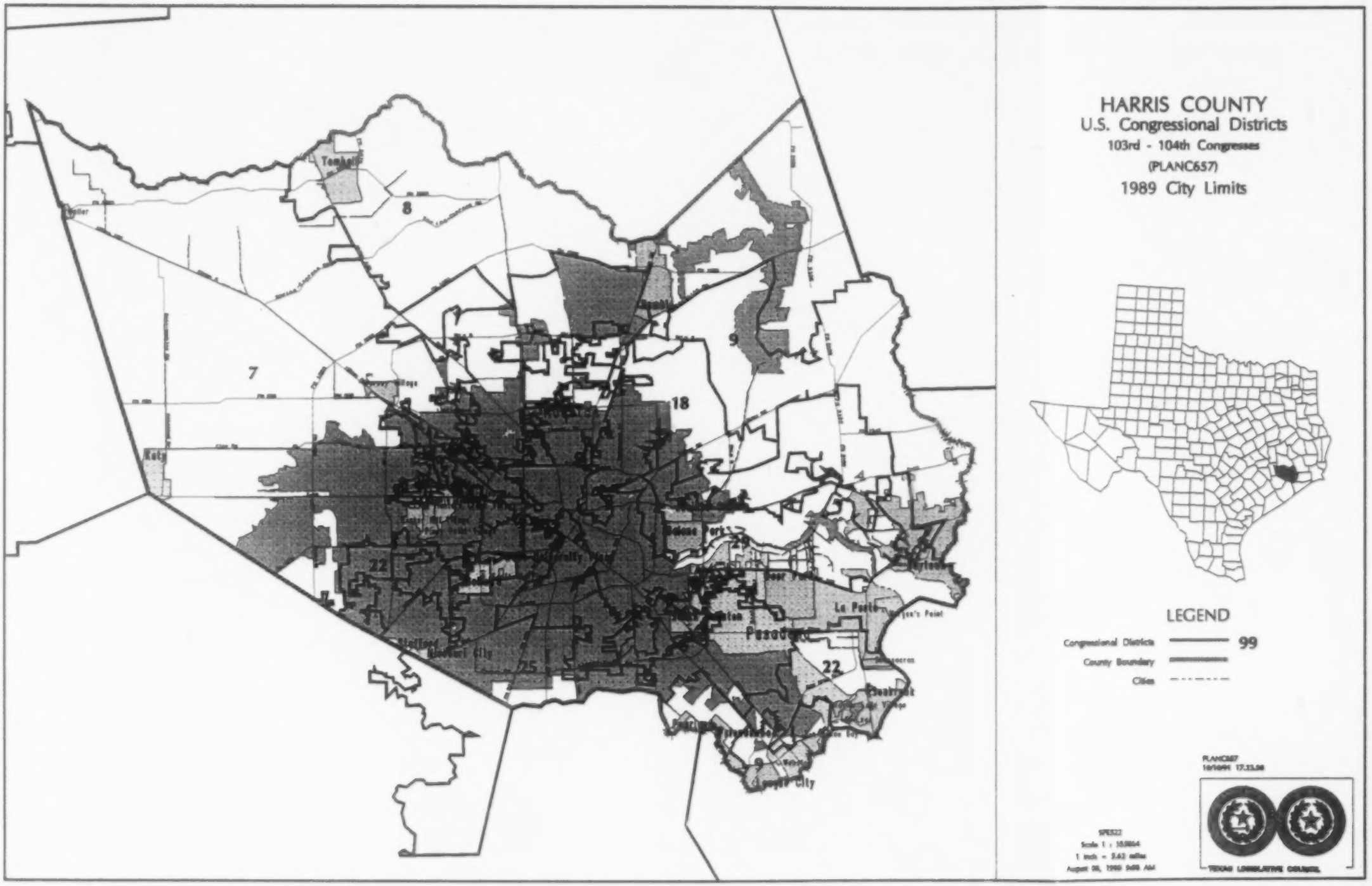
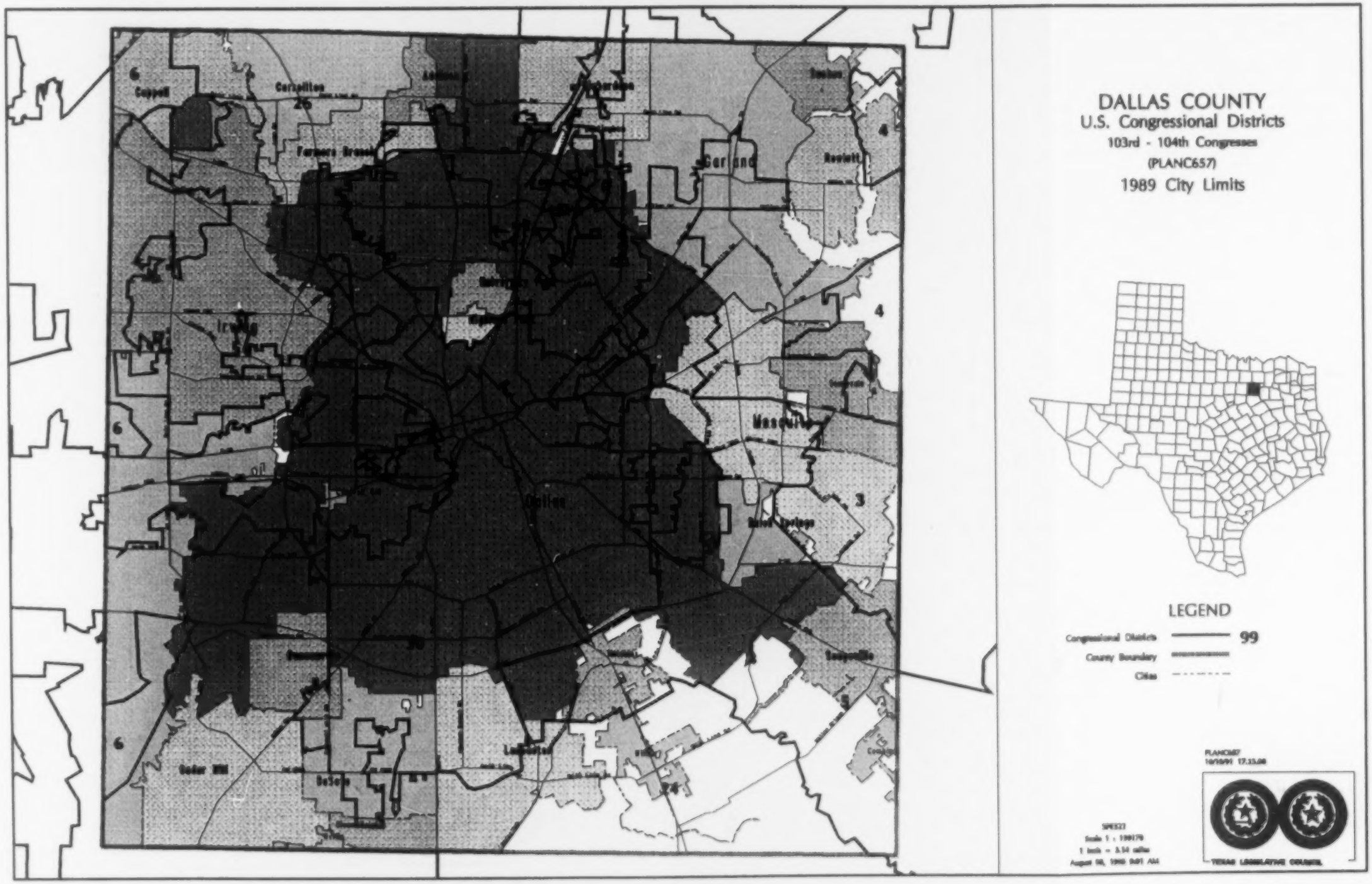
1 inch = 3.14 miles
August 03, 1990 6:04 PM

TEXAS LEGISLATIVE COUNCIL

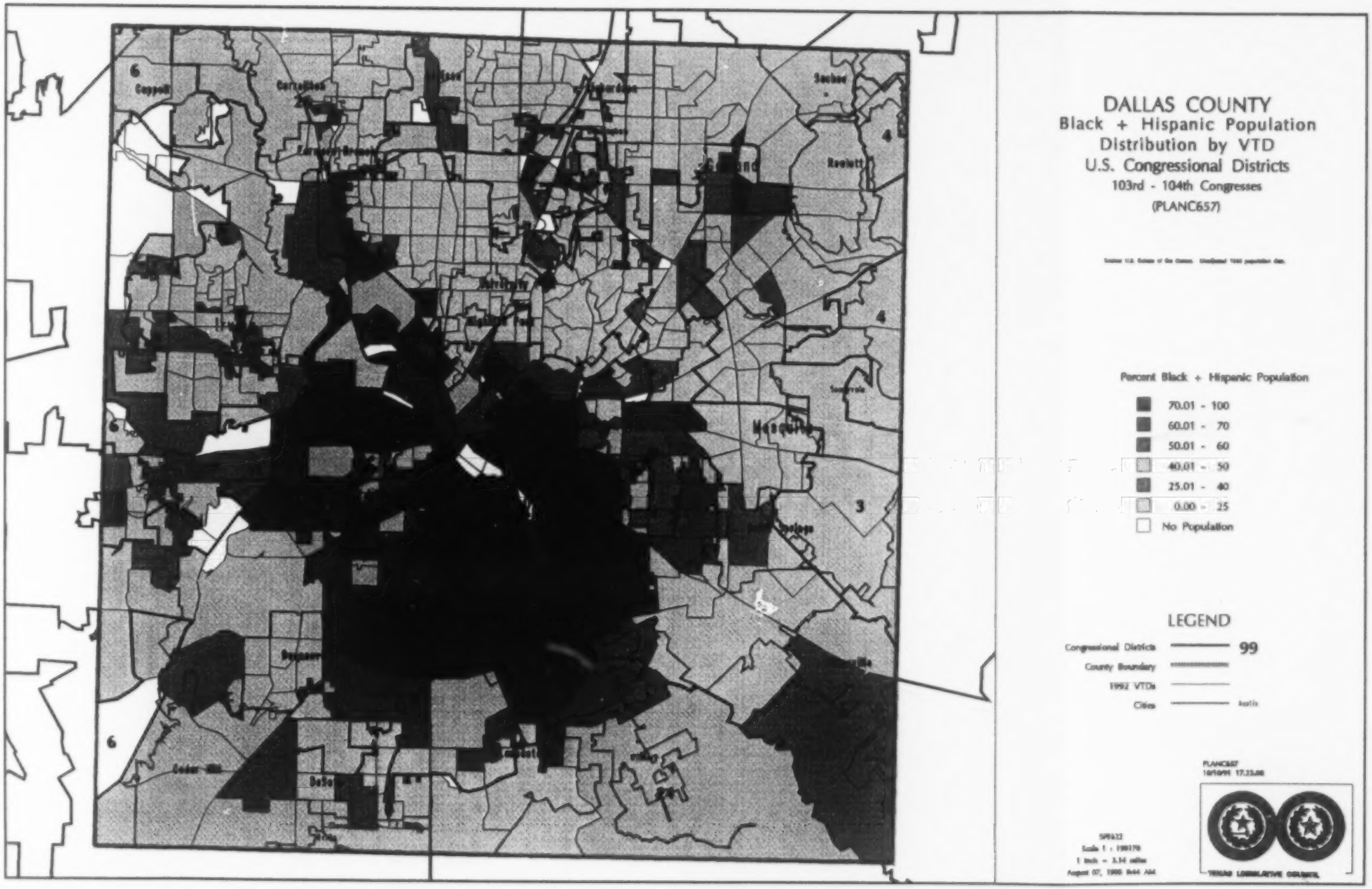
Plaintiffs' Exhibit 34D(1)

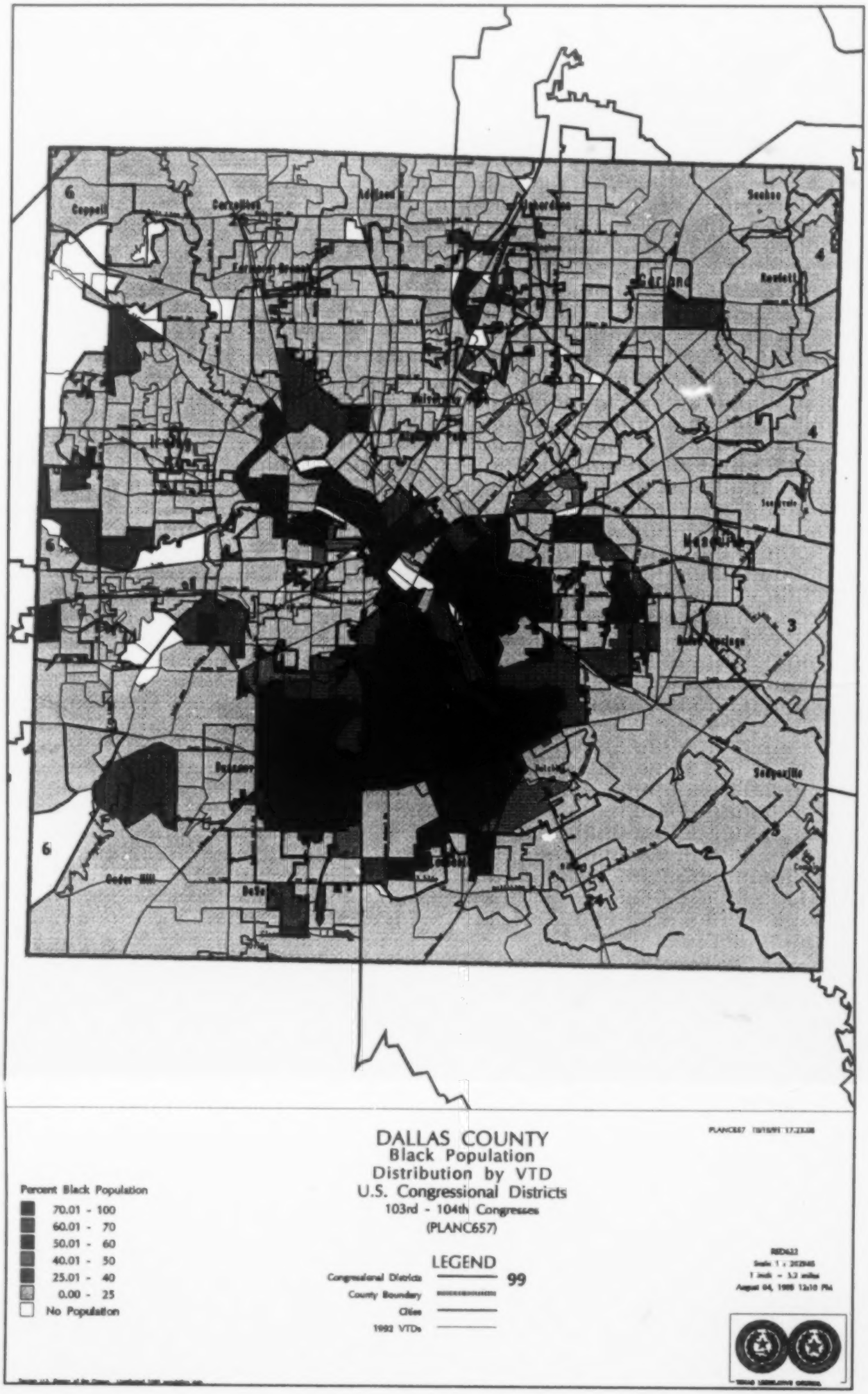


Plaintiffs' Exhibit 34D(2)

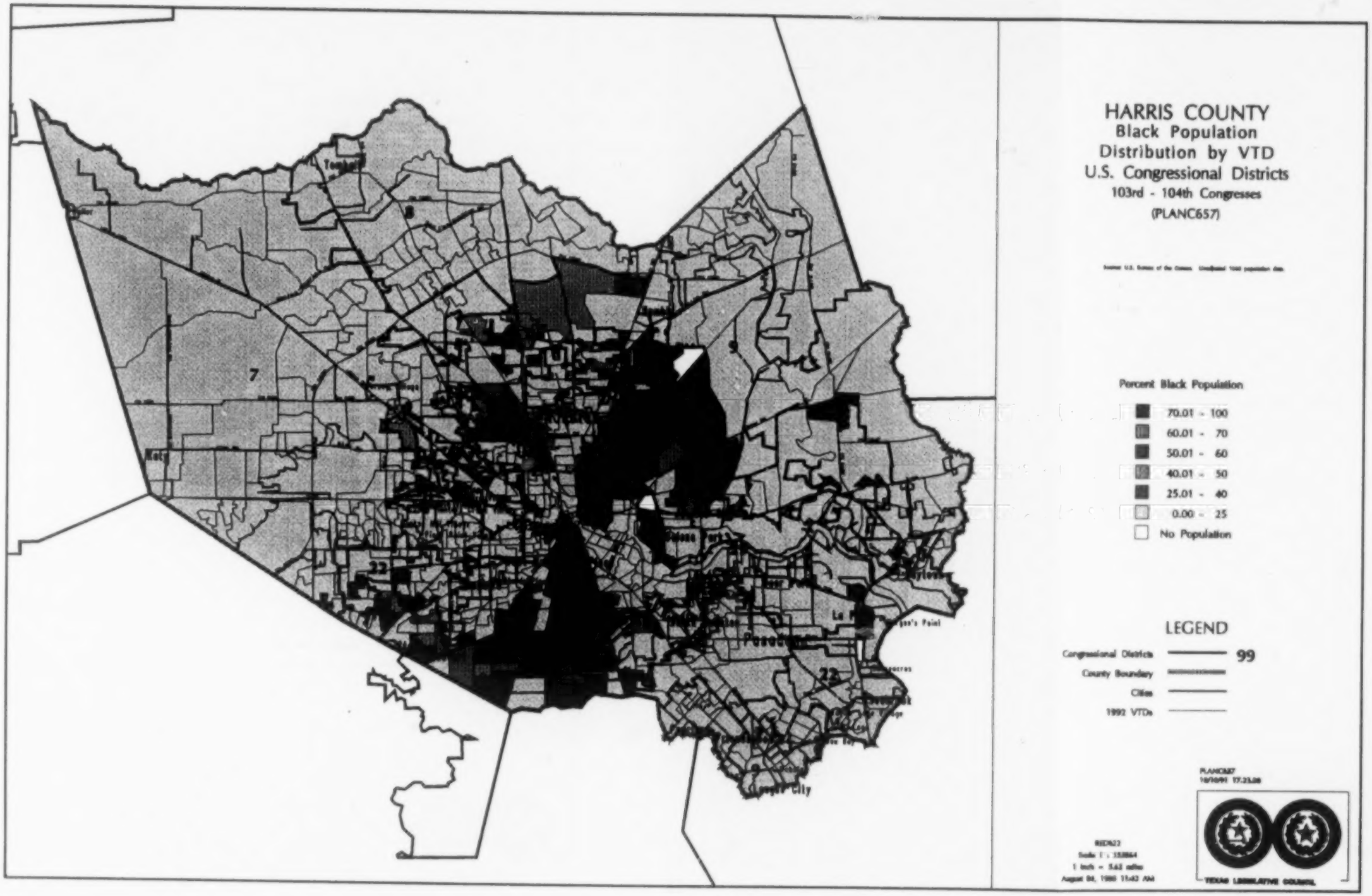


Plaintiffs's Exhibit 34H1

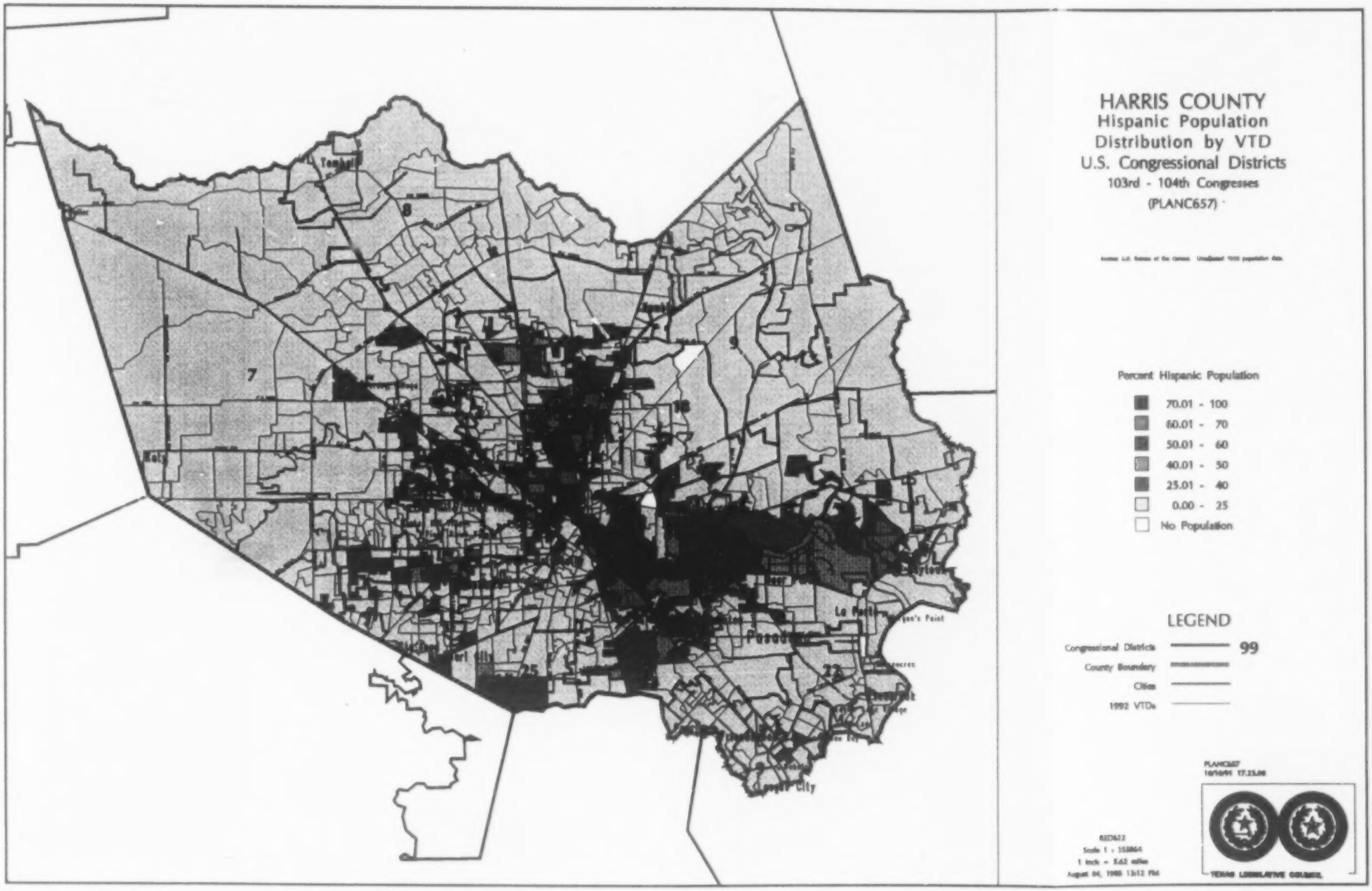



Coppell
Carrollton
Addison
Farmers Branch
Seagoville
Garland
Rowlett
Mesquite
Balch Springs
Cedar Hill
DeSoto
Duncanville
Lancaster
6
4
3
Percent Black Population
70.01 - 100
60.01 - 70
50.01 - 60
40.01 - 50
25.01 - 40
0.00 - 25
No Population
DALLAS COUNTY
Black Population
Distribution by VTD
U.S. Congressional Districts
103rd - 104th Congresses
(PLANC657)
LEGEND
Congressional Districts
99
County Boundary
Cities
1992 VTDs
PLANC657 10/15/91 17:23:08
RED622
August 04, 1998 12:10 PM

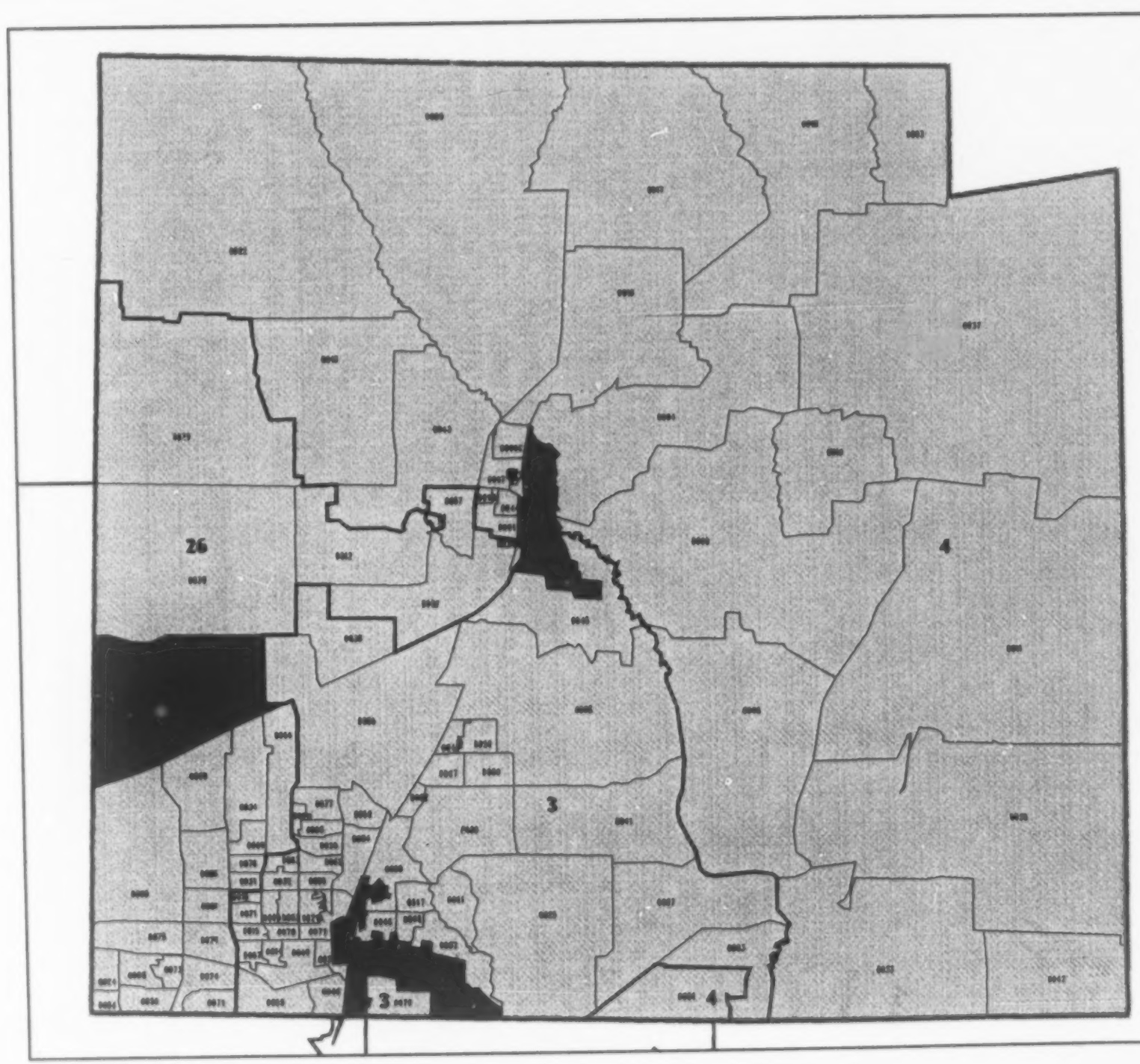
Plaintiffs's Exhibit 34H8



Plaintiffs' Exhibit 34H9



Plaintiffs' Exhibit 34H17



COLLIN COUNTY
Black + Hispanic Population
Distribution by VTD
U.S. Congressional Districts
103rd - 104th Congresses
(PLANC657)

Percent Black + Hispanic Population

- 70.01 - 100
- 60.01 - 70
- 50.01 - 60
- 40.01 - 50
- 25.01 - 40
- 0.00 - 25
- No Population

LEGEND

- Congressional District — 99
- County Boundary
- 1992 VTDs — 0001

PLANC657
10/10/91 17:33:08

BED622
Scale 1 : 191020
1 inch = 3.01 miles
August 04, 1995 3:11 PM

TEXAS LEGISLATIVE COUNCIL

Plaintiff's Exhibit 34O
Population Analysis of Districts under Plan C567

WR6396A	TEXAS LEGISLATIVE COUNCIL - PAR	06/23/94
DATA: 1990 CENSUS	PLAN POPULATION ANALYSIS WITH DISTRICT TOTALS	10:45:21
PLANID: PLANC657 082491 17:14:06	CONGRESSIONAL DISTRICTS	PAGE 1

TOTAL STATE POPULATION	16,986,510	UNASSIGNED POPULATION	0
TOTAL DISTRICTS REQUIRED	30	REMAINING DISTRICTS	0
IDEAL DISTRICTS POPULATION	566,217	UNASSIGNED MEAN DEVIATION	-

	MEAN (AVERAGE)	SMALLEST POPULATION DIST.: 1	LARGEST POPULATION DIST.: 1
DISTRICT POPULATION	566,217	566,217	566,217
TOTAL DEVIATION	0	0	0
PERCENT DEVIATION	0.00%	0.00%	0.00%

PLAN'S RANGE OF DEVIATION: TOTAL = 0 PERCENT = 0.00%

WR6396A
DATA: 1990 CENSUS
PLANID: PLANC657 082491 17:14:06

TEXAS LEGISLATIVE COUNCIL - PAR
PLAN POPULATION ANALYSIS WITH DISTRICT TOTALS
CONGRESSIONAL DISTRICTS

06/23/94
10:45:21
PAGE 2

	VOTER REGISTRATION		POPULATION TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	% OF POPULATION BLACK	HISP	B+H	ANGLO	OTHER
DIST 001	311,259	TTL	566,217	102,480	18,058	119,942	442,209	4,066	18.1	3.2	21.2	78.1	0.7
		VAP	416,554	68,173	11,258	79,066	334,607	2,881	16.4	2.7	19.0	80.3	0.7
DIST 002	316,846	TTL	566,217	94,345	31,976	125,306	436,813	4,098	16.7	5.6	22.1	77.1	0.7
		VAP	414,273	63,850	20,342	83,499	327,887	2,887	15.4	4.9	20.2	79.1	0.7
DIST 003	283,165	TTL	566,217	24,823	34,062	58,505	486,589	21,123	4.4	6.0	10.3	85.9	3.7
		VAP	419,575	16,288	22,638	38,678	366,531	14,366	3.9	5.4	9.2	87.4	3.4
DIST 004	311,037	TTL	566,217	47,413	24,592	71,637	488,804	5,776	8.4	4.3	12.7	86.3	1.0
		VAP	413,296	31,640	14,735	46,163	363,174	3,959	7.7	3.6	11.2	87.9	1.0

	VOTER REGISTRATION		POPULATION						% OF POPULATION				
			TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
DIST 005	281,638	TTL	566,217	92,564	101,099	191,556	363,849	10,812	16.3	17.9	33.8	64.3	1.9
		VAP	414,181	63,308	63,475	125,496	281,296	7,389	15.3	15.3	30.3	67.9	1.8

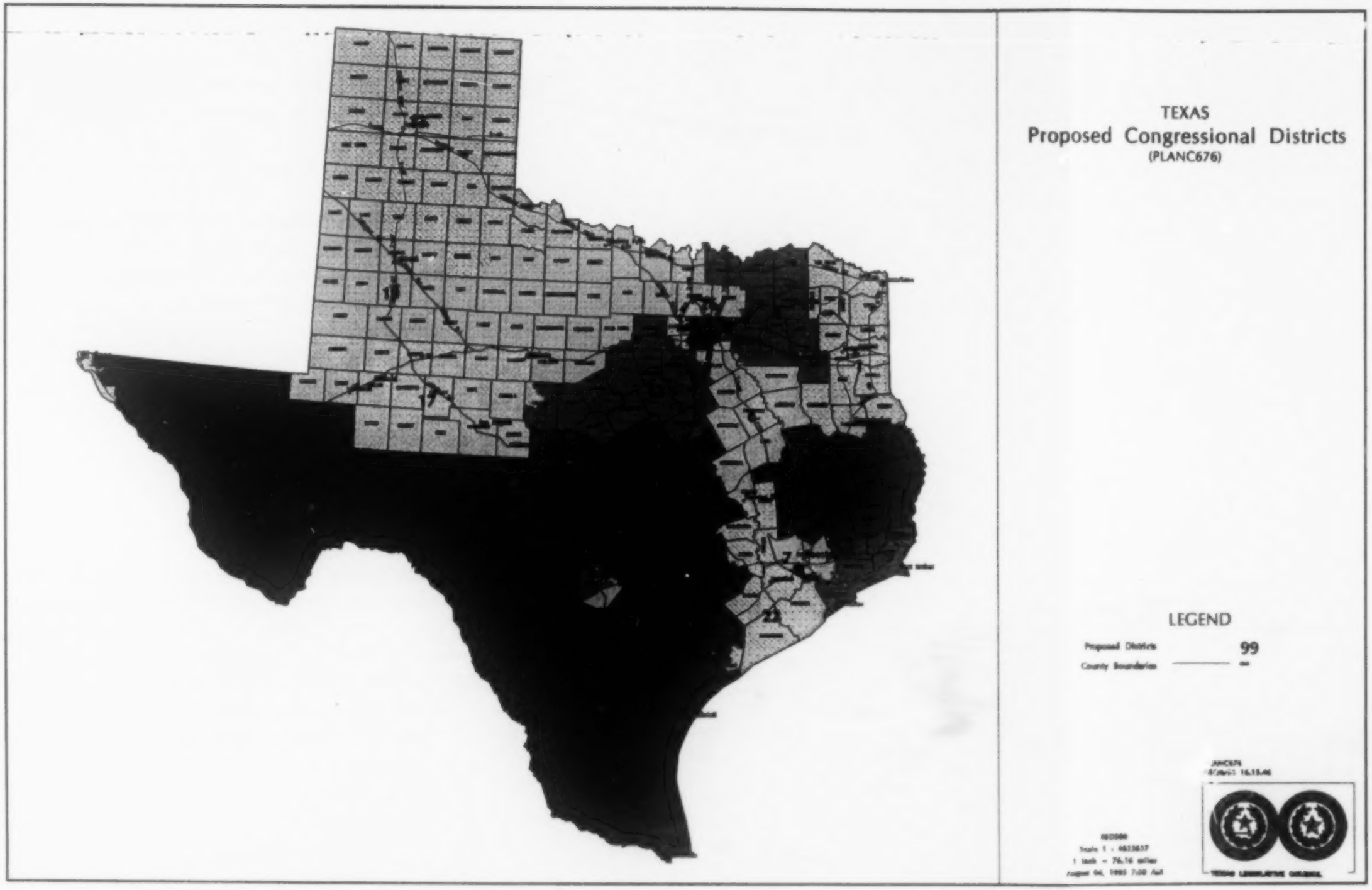
	VOTER REGISTRATION		POPULATION TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	% OF POPULATION BLACK	HISP	B+H	ANGLO	OTHER
DIST 006	289,169	TTL	566,217	25,030	30,856	55,435	496,220	14,562	4.4	5.4	9.8	87.6	2.6
		VAP	411,725	16,631	19,982	36,366	365,457	9,902	4.0	4.9	8.8	88.8	2.4
DIST 007	264,181	TTL	566,217	33,514	67,616	100,156	433,519	32,542	5.9	11.9	17.7	76.6	5.7
		VAP	412,822	21,866	44,802	66,032	324,813	21,977	5.3	10.9	16.0	78.7	5.3
DIST 008	284,716	TTL	566,217	29,707	40,728	70,023	483,782	12,412	5.2	7.2	12.4	85.4	2.2
		VAP	408,226	19,371	26,427	45,558	353,644	9,024	4.7	6.5	11.2	86.6	2.2
DIST 009	311,317	TTL	566,217	122,712	53,487	174,646	378,532	13,039	21.7	9.4	30.8	66.9	2.3
		VAP	410,971	81,472	34,767	115,298	287,093	8,580	19.8	8.5	28.1	66.9	2.1
DIST 010	346,499	TTL	566,217	63,145	121,271	182,246	365,616	18,355	11.2	21.4	32.2	64.6	3.2
		VAP	430,148	43,209	80,327	122,244	293,354	14,550	10.0	18.7	28.4	68.2	3.4
DIST 011	257,740	TTL	566,217	90,248	69,887	158,023	397,438	10,756	15.9	12.3	27.9	70.2	1.9
		VAP	413,528	60,263	43,189	102,270	303,332	7,926	14.6	10.4	24.7	73.4	1.9

	VOTER REGISTRATION		POPULATION TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	% OF POPULATION BLACK	HISP	B+H	ANGLO	OTHER
DIST 012	289,750	TTL	566,217	45,426	92,253	136,693	416,474	13,050	8.0	16.3	24.1	73.6	2.3
		VAP	412,814	30,439	57,013	86,898	317,155	8,761	7.4	13.8	21.1	76.8	2.1
DIST 013	285,903	TTL	566,217	45,342	109,959	154,193	401,891	10,133	8.0	19.4	27.2	71.0	1.8
		VAP	409,490	29,899	64,439	93,774	308,627	7,089	7.3	15.7	22.9	75.4	1.7
DIST 014	299,779	TTL	566,217	60,290	133,703	192,249	368,689	5,279	10.6	23.6	34.0	65.1	0.9
		VAP	407,375	42,199	83,146	124,284	279,659	3,432	10.4	20.4	30.5	68.6	0.8
DIST 015	253,720	TTL	566,217	6,273	422,066	427,654	135,329	3,234	1.1	74.5	75.5	23.9	0.6
		VAP	369,299	4,209	257,157	261,011	106,008	2,280	1.1	69.6	70.7	28.7	0.6
DIST 016	201,106	TTL	566,217	20,272	398,384	417,172	141,546	7,499	3.6	70.4	73.7	25.0	1.3
		VAP	382,985	13,905	254,177	267,379	110,039	5,567	3.6	66.4	69.8	28.7	1.5
DIST 017	296,951	TTL	566,217	20,038	97,116	116,561	444,426	5,230	3.5	17.2	20.6	78.5	0.9
		VAP	412,570	13,362	58,322	71,379	337,609	3,582	3.2	14.1	17.3	81.8	0.9
DIST 018	264,181	TTL	566,217	288,382	86,840	370,913	177,036	18,268	50.9	15.3	65.5	31.3	3.2
		VAP	414,418	201,454	56,629	255,202	145,957	13,259	48.6	13.7	61.6	35.2	3.2

	VOTER REGISTRATION		POPULATION TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	% OF POPULATION BLACK	HISP	B+H	ANGLO	OTHER
DIST 019	272,336	TTL	566,217	14,410	110,776	124,688	433,901	7,628	2.5	19.6	22.0	76.6	1.3
		VAP	403,001	8,974	64,338	73,100	324,370	5,531	2.2	16.0	18.1	80.5	1.4
DIST 020	279,114	TTL	566,217	32,629	343,870	374,807	182,219	9,191	5.8	60.7	66.2	32.2	1.6
		VAP	398,984	22,887	223,856	245,785	146,271	6,928	5.7	56.1	61.6	36.7	1.7
DIST 021	303,689	TTL	566,217	13,972	79,655	93,065	564,609	7,543	2.5	14.1	16.4	82.2	1.3
		VAP	420,498	8,423	51,893	61,043	353,995	5,460	2.2	12.3	14.5	84.2	1.3
DIST 022	265,023	TTL	566,217	44,266	90,920	133,792	391,950	40,475	7.8	16.1	23.6	69.2	7.1
		VAP	406,687	30,299	58,388	87,744	291,448	27,495	7.5.	14.4	21.6	71.7	6.8
DIST 023	260,192	TTL	566,217	16,484	354,149	369,803	190,341	6,073	2.9	62.5	65.3	33.6	1.1
		VAP	374,947	11,002	218,491	229,044	141,711	4,192	2.9	58.3	61.1	37.8	1.1
DIST 024	281,882	TTL	566,217	108,340	123540	229,983	320,980	15,254	19.1	21.8	40.6	56.7	2.7
		VAP	598,176	70,792	74,551	144,211	241,224	10,741	17.9	18.8	36.4	60.9	2.7
DIST 025	263,380	TTL	566,217	152,574	94,525	243,507	300,114	22,596	26.9	16.7	43.0	53.0	4.0
		VAP	405,030	100,745	60,196	158,682	230,002	16,346	24.9	14.9	39.2	56.8	4.0

	VOTER REGISTRATION		POPULATION TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	% OF POPULATION BLACK	HISP	B+H	ANGLO	OTHER
DIST 026	290,058	TTL	566,217	23,679	51,827	74,995	466,816	24,406	4.2	9.2	13.2	82.4	4.3
		VAP	422,747	16,637	34,515	50,848	354,847	17,052	3.9	8.2	12.0	83.9	4.0
DIST 027	252,043	TTL	566,217	13,760	374,783	387,536	173,888	4,793	2.4	66.2	68.4	30.7	0.8
		VAP	380,622	9,221	233,803	242,470	134,778	3,374	2.4	61.4	63.7	35.4	0.9
DIST 028	290,717	TTL	566,217	48,295	341,843	388,487	171,98\78	5,752	8.5	60.4	68.6	30.4	1.0
		VAP	382,636	33,231	216,159	248,464	130,032	4,090	8.7	56.5	64.9	34.0	1.1
DIST 029	264,181	TTL	566,217	57,994	343,332	397,459	157,461	11,297	10.2	60.6	70.2	27.8	2.0
		VAP	377,455	36,972	208,985	243,627	126,067	7,761	9.8	55.4	64.5	33.4	2.1
DIST 030	269,337	TTL	566,217	283,225	96,732	375,233	177,661	13,323	50.0	17.1	66.3	31.4	2.4
		VAP	407,638	192,049	61,586	250,659	147,315	9,664	47.1	15.1	61.5	36.1	2.4

Plaintiffs' Exhibit 35A



Plaintiffs' Exhibit 36

Final Report of Ronald E. Weber
Vera v. Richards

WILDER CRANE PROFESSOR OF GOVERNMENT
UNIVERSITY OF WISCONSIN--MILWAUKEE

and

PRESIDENT, CAMPAIGN AND OPINION
RESEARCH ANALYSTS, INC.
110 EAST CORNERVIEW ROAD
GONZALES, LA 70737

Dated June 25, 1994

Summary of Differences Between
Final and Preliminary Reports

1. Paragraph 10 has been revised and extended to include a discussion of a new Table H-1 reported in Attachment H.
2. Paragraph 14 has been revised to clarify some definitions of brightlines or cutoff points as those terms were discussed at my deposition on June 21-22.
3. Attachment H has been added to the report.

INTRODUCTION

A. Background and Experience

1. My name is Ronald E. Weber and I am a resident of the State of Wisconsin.

2. I am currently the Wilder Crane Professor of Government and Chairman of the Department of Political Science at the University of Wisconsin, Milwaukee, Wisconsin; President of Campaign and Opinion Research Analysts, Inc.; and former coeditor of The Journal of Politics. I received my B.A. in Political Science and History from Macalester College, St. Paul, MN, in 1964 and a Ph.D. in Political Science from Syracuse University in 1969, with specialties in American state politics, voting behavior, and quantitative analyses of political data. A copy of my curriculum vitae is attached as Attachment A.

3. I am the author of numerous scholarly works on state political behavior, including several works on state legislative elections and voting behavior at the individual and aggregate levels of analysis. These works have appeared in such academic journals as the American Political Science Review, The Journal of Politics, Midwest Journal of Political Science, Public Opinion Quarterly, and Legislative Studies Quarterly.

4. I have been retained as a consultant and expert witness in a number of voting rights cases and have been qualified as an expert by the U.S. District Courts in the Middle District (Northern and Southern Divisions) of Alabama, the Northern District (Tallahassee Division) and Middle District of Florida, the Southern District (Augusta Division) of Georgia, the Eastern, Middle, and Western Districts of Louisiana, the District of Maryland, the District (Western Division) of Massachusetts, the Eastern District (Southern Division) of Michigan, the Northern

District (Eastern and Western Divisions) of Mississippi, and the Northern District of Texas. I have given testimony by deposition in a number of cases, including a deposition for the plaintiffs in the Congressional redistricting cases of Shaw v. Reno, n/k/a Shaw v. Hunt (Eastern District of North Carolina, Raleigh Division) and Johnson v. Miller (Southern District of Georgia, Augusta Division). A listing of the cases in which I have testified in Federal court or I was deposed under oath is attached as Attachment B. I also have extensive experience developing redistricting plans for local and state government clients and assisting them with preclearance of those plans under Section 5 of the U.S. Voting Rights Act of 1965, as amended in 1982.

5. I have been retained by plaintiffs in this case and am being compensated at the rate of $100 per hour plus out-of-pocket expenses.

B. Purpose of the Analysis

6. I have addressed the following questions in analyzing whether the 1991 Congressional redistricting in Texas results in a violation of the Fourteenth and Fifteenth Amendments of the U.S. Constitution in accord with factors set forth by the U.S. Supreme Court in Shaw v. Reno:

(1) whether or not race was the overriding factor used by the State of Texas to draw the boundaries of the 1991 Congressional districts;

(2) whether or not several of the Congressional districts in the plan are compact;

(3) whether or not the Congressional districting plan violates other traditional districting criteria;

(4) whether or not voting patterns in recent Democratic primary, runoff, and general elections held within the boundaries of the current Congressional districts reveal patterns of

participation differences between African-Americans, Hispanic, and non-African Americans (Anglos) and racially polarized voting, and, if so, to what extent;

(5) whether or not the nine minority-majority Congressional districts in the plan are overly safe from the standpoint of assuring the election of a candidate of choice of African-American or Hispanic voters; and

(6) whether or not more narrowly tailored plans were or can be created for the Congressional districts that can achieve the same electoral results as the state plan that are less violative of traditional districting criteria.

7. In attempting to assist the court in addressing these questions, I have undertaken an analysis of data reported in the State of Texas' 1991 preclearance submission to the U.S. Department of Justice, as well as other demographic and electoral data. The results of my analysis to date will be presented in this report in the following form: in section I, I will describe the analyses conducted to answer the first three questions and set forth my conclusions on those questions; in Section II, I will describe the electoral database employed, my analytical methodology for the participation and polarization analyses, and set forth my conclusions based upon the application of this methodology to this database; and in section III, I will describe the analyses conducted to answer the last question and set forth my conclusions on that question. Tables and exhibits relevant to my analyses will be included as attachments to this report.

I. ANALYSIS OF DISTRICTING CRITERIA EMPLOYED BY STATE

8. Some of the data needed to address the questions related to the role of race, compactness, and adherence to

other traditional districting criteria is included in the preclearance file submitted to the U.S. Department of Justice in 1991. In addition, data published by the U.S. Bureau of the Census subsequent to the Congressional plan's preclearance in 1991 or included in analyses of compactness conducted by scholars is analyzed in my attempts to answer these questions.

9. The question of whether or not race was the overriding factor used by the State of Texas to draw the boundaries of the Congressional districts can be addressed by an examination of both tabular data compiled by the U.S. Bureau of the Census and maps created on the Redistricting Applications System of the Texas Legislative Council. Data from both sources are displayed on several maps provided within the Section 5 preclearance submission of Texas as well as in detailed county maps created to display the use of race as a redistricting criterion.

10. Tabular data showing how race acted as the overriding consideration in the creation of the final plan for the Texas Congressional districts are reported in Attachments C and H. Table C-1 of Attachment C reports for each Congressional district the racial and ethnic composition of the population of the counties that were sub-divided in the creation of the plan using data from Table 3 of the Texas volume of Congressional Districts of the 103rd Congress published in early 1993 by the U.S. Bureau of the Census. For districts that were created to elect African-American congressmen (e.g., districts 18 and 30), the county splits show a typical pattern of African-American total population majorities or pluralities. For the districts that were created to elect Hispanic congressmen (e.g. districts 15, 16, 20, 23, 27, 28, and 29), the county splits show a typical pattern of Hispanic total population majorities or pluralities. The county splits as they impact the remaining Anglo majority

districts can be divided into two categories: 1) those county splits for the districts where the intent usually was to provide minority voters to shore up the electoral bases of the incumbents who in the past could be characterized as candidates of choice of minority voters (e.g. districts 2, 5, 13, 14, 24, and 25), and 2) those county splits for the districts where the intent usually was to carve out minority voters so as not to endanger the electoral bases of the incumbents who in the past could not be characterized as candidates of choice of minority voters (e.g. districts 3, 4, 6, 7, 8, 19, 21, 22, and 26). Almost every time there was an opportunity to use race or ethnicity as the basis for dividing people up politically, the Texas plan does it. A further indication of how race was used to override other factors can be seen in an examination of Table H-1 in Attachment H. This table reports the same data as in Table C-1 but provides some additional information comparing the racial and ethnic composition of the whole counties to that of the split counties in each district. This table aids one in seeing how many of the split counties were divided by race or ethnicity to put African-American and Hispanic persons from each county in one district, while putting Anglo persons from the same county in a separate district. Whether or not the spliting of a county has a beneficial result for segregating population depends on a comparison with the racial or ethnic makeup of the whole counties going into each district. Note that several split counties in Table H-1 are designated as bridge counties. These are counties in the rural parts of the state that had to be split to reach further out to grab minority populations for other parts of the district. These bridges in rural counties are the equivalent of the industrial or downtown corridors used in the urban area districts to further the creation of racially and ethnically segregated districts.

11. Table C-2 in Attachment C provides further confirmation that race was the overriding factor in the

drawing of the lines for the Texas Congressional districts. This table reports the exact same data as in Table C-1 except that in Table C-2 the data are organized by county rather than Congressional district. The pattern shown in each of the counties that are split is one in which almost always the sub-division was along racial or ethnic lines. For example, Dallas County is part of seven Congressional districts. The lines were drawn to place most of the minority African-American or Hispanic population in three districts (the 5th, 24th, and 30th districts), while the Anglo population shows predominant percentages in four districts (the 3rd, 4th, 6th, and 26th districts). In another example from Table C-2, Harris County is also divided into seven Congressional districts. There the lines were drawn to place most of the minority African-American or Hispanic population in three districts (the 18th, 25th, and 29th districts), while the Anglo population shows predominant percentages in four districts (the 7th, 8th, 9th, and 22nd districts). The same pattern applies for Bexar, Brazoria, Brazos, Comal, Ector, Fort Bend, Gregg, Guadalupe, Jim Wells, Lubbock, Midland, Montgomery, Nacogdoches, Smith, Tarrant, Tom Green, Travis, Waller, and Williamson counties. In each of those counties, the population on one side of a Congressional district line is more strongly minority while being more strongly Anglo on the other side of the line. I can infer from these data that race was an overriding factor in the line drawing for the Texas Congressional districts.

12. Yet another way to see how race is the overriding consideration used by Texas to create the Congressional districting plan is to view the maps of the split counties prepared by the staff of the Texas Legislative Council using the Redistricting Application System facilities. These maps, which will be offered as Plaintiffs' exhibits at trial, display the racial and ethnic breakdown of the total population within the split counties

at the Voting Tabulation District (VTD) level of geography along with lines demarking the Congressional district boundaries in each county. The maps showing African-American composition at the VTD level indicate clearly and dramatically that majority African-American VTDs lie overwhelmingly on one side of a Congressional district line while majority non-African-American VTDs lie overwhelmingly on the other side of a line. The same pattern holds in another set of maps for Hispanics, with a clear and overwhelming indication that majority Hispanic VTDs lie overwhelmingly on one side of a Congressional district line while majority non-Hispanic VTDs lie overwhelmingly on the other side of a line. A final set of maps were created to show the combined African-American and Hispanic composition of the VTDs in the split counties. The same pattern discussed above holds for these maps, with combined minority population VTDs lying on one side of a Congressional district boundary line, while Anglo majority population VTDs lying on the other side of a district boundary line. These sets of maps document clearly that race and ethnicity were driving the line drawing in the State of Texas' Congressional districting plan.

13. The question of whether or not several of the Congressional districts contained in the state's plan can be considered compact can be answered first by examining the map of the districts. A statewide map of the districts and the maps of the sub-divided county demonstrate clearly that several of the districts are not compact, particularly districts 3, 4, 5, 6, 8, 9, 12, 14, 15, 16, 18, 19, 21, 22, 23, 24, 25, 28, 29, and 30. A second way to assess the compactness of the district is to look at the professionally acceptable measures of compactness employed by political scientists in scholarly studies of compactness. These works are Richard H. Pildes and Richard G. Niemi, "Expressive Harms, 'Bizarre Districts,' and Voting Rights: Evaluating Election District

Appearances After Shaw", University of Michigan Law Review 92 (December 1993): 101-205, and Richard G. Niemi, Kimball W. Brace, and Doug Chapin, "Bright Lines, Guidelines, and Tradeoffs: The Conflict Between Compactness and Minority Representation in the Congressional Districts of the 1990s" (Paper presented at the 1993 Annual Meeting of the Midwest Political Science Assocation, Chicago, Illinois).

14. According to these two scientific studies, the Congressional districts of Texas can be classified by degrees of compactness. On the first professionally accepted measure of compactness, namely the dispersion compactness measure, a total of ten districts score below the highest brightline or cutoff point discussed in the studies--districts 4, 6, 15, 16, 19, 21, 23, 25, 29, and 30. On the second professionally accepted measure of compactness, namely the perimeter compactness measure, a total of 15 districts fall below the highest brightline or cutoff point considered in the studies--districts 3, 4, 5, 6, 8, 9, 12, 14, 18, 21, 22, 24, 25, 29, and 30. On the third and final professionally accepted measure of compactness, namely the population compactness measure, a total of 11 districts score below the highest brightline or cutoff point discussed in one of the studies--districts 4, 5, 6, 14, 18, 21, 22, 23, 25, 29, and 30. All three compactness measures vary between 0 (least compact) and 1 (most compact). These scores for a number of Texas Congressional districts are well below the lowest brightlines or cutoff points for measuring compactness as set out in Pildes and Niemi (1993), and Niemi, Brace, and Chapin (1992). Pildes and Niemi (1993: 183) report a total of six districts from Texas--districts 3, 6, 18, 25, 29, and 30--with either low dispersion ($\leq$ 0.15) or perimeter ($\leq$ 0.05) compactness scores. And Niemi, Brace, and Chapin (1993) report a total of four additional districts from Texas--districts 4, 14, 21, and 23--with low population ($\leq$ 0.35) compactness scores. Thus, the two

studies together report that ten districts (or one-third of districts in the plan) score in the lowest category on one of the three compactness measures. The fact that the compactness scores for one-third of the state's districts fall well below the brightlines or cutoff points for the two studies substantiates that the total plan is not compact and has a very unusual configuration both in terms of geography and population concentrations.

15. The question of whether or not the districts in the Texas Congressional plan violate other traditional districting criteria can be addressed by an examination of tabular data on the splitting of counties and municipalities and by comparing a map of the state's plan with a map of cultural areas within Texas adapted from D. W. Meinig, Imperial Texas: An Interpretive Essay in Cultural Geography (Austin: University of Texas Press, 1969). Plaintiffs will present exhibits at trial reporting data relating to the splitting of counties and municipalities by the plan. A total of 35 counties are split by the plan, whereas a total of only 13 counties were split in the Congressional plan used throughout the 1980s. A large number of municipalities are split in the plan including many of the major and minor cities of the state. The fact that such a large number of municipalities are split suggests that little or no regard was given to political subdivision boundaries in drawing the plan. A comparison of a map of the state with a map of the cultural regions within Texas taken from the work of D. W. Meinig, Imperial Texas: An Interpretive Essay in Cultural Geography, reveals that a number of the districts traverse the cultural regions of Texas.

II. ANALYSIS OF PARTICIPATION AND POLARIZATION

A. Database

16. The database used in the electoral analysis in this preliminary report came from one source: the Redistricting Applications Office of the Texas Legislative Council. Data required to measure the racial and ethnic composition of each voting precinct was provided for the elections of 1988, 1990, and 1992. This office also provided me a tabulation of the total number of registered voters and the total number of voters who signed-in to vote for each election I have analyzed.

17. Election data for the years 1988 through 1992 were also provided by the Redistricting Applications Office at the precinct level for selected Democratic primary, runoff, or general elections for U.S. Congress, Attorney General, Railroad Commissioner, and positions on the state judiciary.

18. The demographic and electoral data produced through these procedures was then merged in order to enable me to conduct the regression and homogenous precinct analysis described in the next subsection.

B. Methodology

19. A selected number of U.S. Congressional, state Railroad Commissioner, and state judicial Democratic primary, runoff, and general elections from 1988 through 1992 in precincts covered by each of the Congressional districts have been analyzed.

20. Analysis for all of these elections has included both bivariate ecological regression analysis and the complementary technique of extreme case (or homogenous precinct) analysis. Such procedures were

those used in the Thornburg v. Gingles case to determine the extent to which whites and blacks differed in their voting behavior. These are procedures which I have employed in other voting rights cases. Regression analysis and extreme case analysis are described in more technical detail in Attachment D.

21. Such analyses produce estimates of the percentage of votes won by each of the candidates in an election from African-American and non-African-American voters, Hispanic and non-Hispanic voters, or Anglo and non-Anglo voters. These estimated racial and ethnic divisions enable one to determine if African-American, Hispanic, or Anglo voters act cohesively in support of their candidate of choice in these elections. This estimation in turn enables one to determine the levels of participation by the three groups in the election and the levels of racial or ethnic polarization in voting.

22. While bivariate and extreme case analysis can produce satisfactory estimations for the purpose of determining levels of participation and racial or ethnic polarization in voting, the court should be aware that these remain estimations nevertheless. There are a host of imperfections necessarily involved in these analyses. So long as political scientists are not permitted to go inside the voting booth with voters, estimations of voting behavior must be approached with some measure of caution and with consideration of non-numeric factors.

C. Findings

23. The results of my analysis concerning patterns of participation differences between African-Americans, Hispanics, and Anglos in Texas and racially or ethnically polarized voting are as follows:

1. Participation

24. I have analyzed registration, turnout, and participation rates for the Democratic primary and general elections for U.S. Congress in 1988, 1990, and 1992 in Texas to determine the patterns of participation among African-Americans, Hispanics, and Anglos (see Attachment E). For the purposes of my analyses, I am looking at three dimensions of overall participation in the electoral process. Registration is simply measured as the proportion of the voting age population registered to vote for an election. Turnout is defined and measured as the proportion of persons of voting age who signed in to vote on the day of the election. Participation is defined as the proportion of persons of voting age who actually chose to vote in the Congressional election. (Participation is not to be confused with turnout which is defined as the proportion of persons of voting age who signed in to vote on the day of the election. Not all persons who turnout participate by casting a vote for a candidate in a Congressional election.)

25. In the 1992 general election held within the boundaries of the thirty Congressional districts of the Texas plan, voter registration rates as a percentage of the voting age in each district ranged from a low of 47.7 percent in Harris County's 29th district to a high of 80.2 percent in the 6th and 21st districts (see Attachment E). The turnout rate varied as well, with the range of persons signing-in to vote running from a low of 28.3 percent of the voting age population in the 29th district to a high of 67.4 percent in the 6th district. Finally participation rates vary too, with the range of persons casting a ballot in a Congressional election varying from a low of 25.9 percent of the voting age population in Bexar County's 20th district to a high of 63.9 percent in the 6th district. Note that this last measure of participation is sensitive to contesting, for when the Congressional general election is

uncontested the incentive is reduced for voters to cast a vote for that office. Also note that these rates of voter registration, turnout, and participation are not estimates, but real numbers produced by tabulating the number of persons registered, signed-in, or voting at any particular election and then dividing those counts by the number of persons of voting age in each district. These calculations are reported to provide a baseline to use when evaluating the estimates of registration, turnout, and participation for the three racial and ethnic groups in the state of Texas. Similar data are also reported for the 1988 and 1990 general elections held within the boundaries of the Congressional districts of that time.

26. In the 1992 Democratic primary election held within the boundaries of the thirty Congressional districts of the Texas plan, voter registration rates as a percentage of the voting age in each district display a similar pattern as in the general election of that year. Voter registration rates ranged from a low of 46.9 percent in the 29th district to a high of 75.1 percent in the 2nd district of east Texas (see Attachment E). The turnout rate across the districts in the Democratic primary varied more dramatically than in the general elections, with the range of persons signing-in to vote running from a low of 4.4 percent of the voting age population in the 7th district of Harris County to a high of 28.0 percent in the 2nd district. In a party primary election, turnout rates are sensitive to the partisan makeup of the district and contesting. The 7th district has a higher proportion of participants in the Republican primary than the Democratic primary, and hence the district's turnout rate in the Democratic primary should be low. Furthermore, there was no one contesting for the Democratic nomination that day for U.S. Congress. On the other hand, the 2nd district has a higher proportion of participants in the Democratic primary than in the Republican primary, and a contest for the Democratic nomination for U.S. Congress probably attracted those

Democrats to the polls on primary day. Finally the participation rates in Democratic primary contest for U.S. Congress vary too, particularly in comparison to the participation rates in the general election, with the range of persons casting a ballot in a Congressional primary election varying from a low of 0.0 percent of the voting age population in the 3rd and 7th districts (where no one ran for the Democratic nomination for Congress) to a high of 25.9 percent in the 2nd district (where there was a contest for the Democratic party nomination). Similar data are also reported for the 1988 and 1990 Democratic primary elections held within the boundaries of the Congressional districts of that time.

27. In the 1992 general election held within the boundaries of the thirty Congressional districts of the Texas plan, African-American voter registration rates are estimated as a percentage of the African-American voting age in each district. African-American persons are registered at higher rates than Anglos or Hispanics in the 9th, 18th, 24th, and 30th Congressional districts, and are relatively close to parity with another group in the 14th and 25th districts. Hispanic persons are registered at higher rates than Anglos or African-Americans in the 20th and 28th districts. African-Americans have a turnout (signed-in voters) advantage over the other two groups in only the 30th district, with African-Americans just slightly behind in the 18th district. In no district does the Hispanic turnout rate exceed the turnout rate of Anglos or African-Americans. The patterns of participation of African-Americans in the Congressional election are similar to the patterns of turnout, with the African-American rate of participation exceeding that of Anglos and Hispanics in the 18th and 30th districts. Hispanic participation is higher than Anglo or African-American participation in two districts-the 20th and 28th. The effect of these turnout and participation differences was to enhance the power of the African-American vote within

the 18th and 30th Congressional districts and the power of the Hispanic vote within the 20th and 28th districts beyond the level revealed among the voting age population.

28. I have also analyzed the general election registration, turnout, and participation rates in 1988 and 1990 for Congress in the precincts contained in the 27 districts used during the 1980s to elect members of Congress. In the old districts, African-American registration rates were higher in 1990 than Anglo or Hispanic rates in the 1st, 4th, 5th, 6th, 8th, 9th, 12th, 14th, 18th, 24th, and 25th districts. Hispanic registration rates were higher than Anglo or African-American rates in only the 20th district at the time of the 1990 general election. African-American registration rates were also higher than Anglo or Hispanic rates in the 1988 general election in the 1st, 4th, 5th, 6th, 8th, 9th, 12th, 14th, 18th, 19th, 24th, and 25th districts, while Hispanic rates were higher than Anglo or African-American rates in only the 20th district in that year.

29. My analyses of turnout rates in the 1990 and 1988 general elections show that African-Americans signed-in to vote at higher rates than Anglos or Hispanics in the 18th district in 1990 and in the 8th, 18th, 24th, and 25th districts in 1988. The Hispanic turnout rate was higher than the Anglo or African-American rate in none of the districts in 1990, while the Hispanic turnout rate was higher than the rates of the other groups in the 20th district in 1988.

30. My analyses of participation rates in the 1990 and 1988 general elections show that African-Americans voted in the Congressional elections at higher rates than Anglos or Hispanics in the 18th, 24th, and 25th districts in 1990 and in the 18th and 25th districts in 1988. The Hispanic participation rate was higher than the Anglo or

African-American rate in only the 20th district in 1990 and 1988.

31. In the 1992 Democratic primary election held within the boundaries of the thirty Congressional districts of the Texas plan, African-American voter registration rates are estimated as a percentage of the African-American voting age in each district. African-American persons are registered at higher rates than Anglos or Hispanics in the 9th, 18th, 24th, 25th, 29th, and 30th districts. Hispanic persons are registered at higher rates than Anglos or African-Americans in the 20th and 28th districts at the time of the Democratic primary. African-Americans have a turnout (signed-in voters) advantage over the other two groups in the 9th, 12th, 14th, 18th, 24th, 25th, and 30th district. In the 20th, 23rd, 28th, and 29th districts the Hispanic turnout rate exceeds the turnout rate of Anglos or African-Americans. The patterns of participation of African-Americans in the Congressional primary election are similar to the patterns of turnout, with the African-American rate of participation exceeding that of Anglos and Hispanics in the 9th, 12th, 18th, 24th, 25th, and 30th districts. Hispanic participation is higher than Anglo or African-American participation in five districts-the 20th, 23rd, 27th, 28th and 29th. The effect of these turnout and participation differences was to enhance the power of the African-American vote within the 9th, 12th, 18th, 24th, 25th and 30th Congressional districts and the power of the Hispanic vote within the 20th, 23rd, 27th, 28th, and 29th districts beyond the level revealed among the voting age population in each district.

32. In the Democratic primaries of 1990 and 1988, I have also estimated the registration, turnout, and participation rates of African-Americans, Hispanics, and Anglos. The registration rate of African-Americans in the 1990 Democratic primary was higher than that of Anglos or Hispanics in the 1st, 4th, 5th, 6th, 9th, 12th, 14th, 18th,

24th, and 25th districts, while the African-American rate was higher than that of the other two groups in the 1988 Democratic primary in the 5th, 18th, 24th, and 25 districts (of those for which I have completed analyses). The registration rates of Hispanics compared to the rates of Anglos and African-Americans were higher in the 20th district in 1990 and in the 20th and 23rd districts in 1990. The turnout rates of African-Americans was higher than that of the other two groups in the 1990 Democratic primary in the 5th, 18th, 20th, 24th and 25th districts and in the 5th, 18th, 20th, 24th, and 25th districts at the time of the 1988 Democratic primary. The patterns of participation revealed in the Democratic primaries of 1990 and 1988 show African-Americans participating at a higher rate than Anglos or Hispanics in the 5th, 6th, 9th, 12th, 14th, 18th, 24th and 25th districts in 1990 and in the 18th district in 1988.

33. The analyses of registration, turnout, and participation differences between the three different racial and ethnic groups in the six different recent elections held within the boundaries of the current and old Congressional districts of Texas indicate that 1) African-American persons are registered to vote at higher rates than Anglos or Hispanics in the parts of the state where they are concentrated; 2) Hispanic voters are only registered to vote at higher rates in the two districts which include large parts of Bexar County (non-citizenship probably is a factor that lowers the Hispanic registration rate in other parts of South, Southwest, and Southeast Texas; 3) African-American voters turnout and participate at higher or equal rates to Anglos or Hispanics in general elections in the 18th and 30th Congressional districts under the current plan; 4) Hispanic voters participate at higher rates than the other two groups in general elections in the 20th and 28th districts under the current plan; 5) the turnout and participation behavior of African-Americans and Hispanics in the Democratic primary enhances the

ability of the groups to influence the political process in that there are eleven districts under the current plan where the voting behavior of these two groups work to their advantage; and 6) the registration, turnout, and participation behavior of African-Americans and Hispanics under the old plan of the 1980s displays similar patterns revealed under the current plan, except that the influence of the two groups was more broadly spread under the old plan than under the new plan.

34. The analysis of participation is only one part of the overall electoral analysis. In order to determine the overall safeness of the districting plan, I also need to examine the extent of racial polarization in voting as well as the degree of cross-over support given to the candidates of choice of African-American and Hispanic voters by Anglo voters within the districts as well as the patterns of support that Hispanic voters give to African-American candidates and that African-Americans give to Hispanic candidates.

2. Racial or Ethnic Polarization in Voting

35. I have analyzed all of the contested general elections in Texas for U.S. Congress in 1992 under the current plan and in 1990 and 1988 under the old plan to determine the patterns of racially or ethnically polarized voting within each district. In addition, I have analyzed a set of five statewide elections within the boundaries of the minority-majority Congressional districts under the current plan and three statewide elections within the boundaries of the old Congressional districts for the districts with substantial minority populations. These elections include the Democratic primary and general elections for Railroad Commissioner and Court of Criminal Appeals Place 4 in 1992; the general election for Court of Criminal Appeals Place 6 in 1992; the Democratic primary and general election for Attorney

General in 1990; and Democratic primary and runoff election for Court of Criminal Appeals Place 2 in 1990.

36. The analyses of the general elections races in 1992 and 1990 show that both African-Americans and Hispanics give strongly cohesive support to Democratic candidates in all of the elections for Congress and in the statewide elections held within the boundaries of the current and old Congressional districts.

37. In the Democratic primary elections for Congress in 1992, African-Americans were strongly cohesive in support of the African-American candidate in the district 30. In the other African-American majority district, Craig Washington, the incumbent Congressman from district 18, was unopposed. In 1990 Washington was also unopposed in his first bid for renomination within the 18th district.

38. In the Democratic primary elections for Congress in 1992, Hispanic voters were uncohesive in their support of either the Hispanic candidate or the Anglo incumbent in the four-candidate race in the 16th district. In district 29, Hispanic voters were uncohesive in their support of any candidate in five-candidate, although the group did give a slight majority of its support to Reyes one of three Hispanic candidates. In the runoff primary in that district, Hispanic voters were strongly cohesive in support of Reyes, but Green the Anglo candidate won with support from Anglos and cross-over support from African-Americans and some Hispanics. In 1990 all members of Congress were unopposed for renomination so it was impossible to conduct any analyses of elections held within Hispanic areas of South, Southwest, or Southeast Texas.

39. I also analyzed the statewide Democratic primary contests for Railroad Commissioner and Court of

Criminal Appeals Place 4 in 1992 and for Attorney General and Court of Criminal Appeals Place 2 in 1990. In the 1992 Democratic primary for the Court of Criminal Appeals Place 4 in which Morris Overstreet an African-American competed against Gene Kelly, African-American voters were strongly cohesive in supporting Overstreet in district 30 and moderately cohesive in their support of him in districts 18 and 29. Overstreet also competed for Place 2 on the Court of Criminal Appeals in the 1990 Democratic primary. He received moderately cohesive support from African-American voters in the old 5th, 18th, 20th, 24th, and 25th districts in that three-candidate contest. In the runoff primary election, he received strongly or moderately cohesive support from African-Americans within the same districts while narrowly losing the nomination.

40. In the Democratic primary elections for statewide office involving Hispanic candidates in 1992 or 1990, Hispanic voters were strongly cohesive in support of Guerrero the Hispanic candidate in the 1992 Railroad Commissioner 3 contest in the 15th, 16th, 20th, 27th, 28th, and 29th districts of the current plan and moderately cohesive in her support in district 23. Hispanic voters also were strongly cohesive in their support of Morales the Hispanic candidate in the 1990 Attorney General race in the 15th, 16th, 18th, 20th, 23rd, and 27th districts, while being moderately cohesive in the 24th district. Both Hispanic candidates won their nomination races statewide.

41. The analyses of racial and ethnic polarization in voting in the different recent elections held within the boundaries of the current minority-majority Congressional districts of Texas or within the old Congressional districts with substantial minority populations indicate that some racial or ethnic polarization in voting occurs, but for the most part the racial or ethnic polarization in voting is not legally or politically consequential. Candidates of choice

of African-American voters won all contests for the Congressional office in the 18th and 30th districts in 1992, while candidates of choice of Hispanic voters won all of the elections in 15th, 16th, 20th, 23rd, 27th, and 28th districts in 1992. In only the Democratic runoff for U.S. Congress in district 29 in 1992 did the candidate of choice of Hispanic voters lose. And this loss can be explained as much by the factional character of Hispanic politics in the city of Houston than by ethnically polarized voting given that the three Hispanic candidates won almost 70 percent of the vote in the district in the Democratic primary election. It should also be pointed out that the 29th district does not have an Hispanic citizen voting age population majority, but that a plurality of the citizen voting age population in the district is Anglo.

3. Reconstituted Election Return Analysis

42. Using actual precinct-level returns for the 1988, 1990, and 1992 elections analyzed above, it is possible to reconstitute the results of state elections into the boundaries of the Congressional districts adopted by Texas in 1991. These reconstituted results are reported for the 1988 Democratic Presidential Preference primary election when Jesse Jackson competed for the Democratic presidential nomination; the 1988 general election when Gonzalez was the Democratic Hispanic candidate for Justice of the Supreme Court Place 8; the 1990 Democratic primary and runoff elections when Morales was the Hispanic candidate for Attorney General and Overstreet was an African-American candidate for Court of Criminal Appeals Place 2; the 1990 general elections when Morales and Overstreet ran as Democratic candidates for Attorney General and Court of Criminal Appeals Place 4, respectively; the 1992 Democratic primary election when Guerrero was the Hispanic candidate for Railroad Commissioner 3 and Overstreet was an African-American candidate for Court of Criminal

Appeals Place 4; and the 1992 general election when Guerrero was the Democratic Hispanic nominee for Railroad Commissioner 3, Overstreet was the Democratic African-American nominee for Court of Criminal Appeals Place 4, and Benevides was the Democratic Hispanic nominee for Court of Criminal Appeals Place 6. The reconstituted returns for these 12 elections will be used to gauge the racial or ethnic competitiveness or safeness of the districts in the current state plan (see Attachment F).

43. The results of the six statewide contests involving an African-American candidate for the African-American majority Congressional districts 18 and 30 indicate that all six African-American candidates win the contests in the two Congressional districts, with the winning percentages being quite comfortable in both districts. In the reconstituted results for the six statewide Hispanic candidates, the Hispanic candidates who win statewide all win in each of the seven Hispanic total population majority districts. Even Guerrero the Democratic nominee for the Railroad Commissioner 3 position in 1992 carried six of the seven Hispanic majority districts, losing only the 23rd district in Southwest Texas. These analyses reveal that the candidates preferred by either African-American or Hispanic voters often achieved very comfortable margins of victory in each of the contests held within the precincts of the African-American or Hispanic minority-majority districts of Texas. The patterns of group participation and group cohesion, coupled with Anglo and other group cross-over voting all contributed to these margins of victory.

D. Safeness of Minority-Majority Congressional Districts

44. All of the above analysis on registration, turnout, and participation differences between African-Americans, Hispanics, and Anglos, on patterns in racial or

ethnic polarization in voting, and the reconstituted elections results analyses were undertaken to answer the question of whether or not the minority-majority Congressional districts in the current Texas plan are overly safe from the standpoint of assuring the election of a candidate of choice of African-American or Hispanic voters. Based on my analyses, the following districts as adopted by Texas and pre-cleared by the U.S. Department of Justice are overly safe in the general as well as in the Democratic primary and runoff elections: districts 15, 18, 20, 28, and 30.

III. ANALYSIS OF DISTRICTING ALTERNATIVES

45. In order to demonstrate whether or not more narrowly tailored plans were or can be created for Congressional districts that can achieve the same electoral results as the current state plan that are less violative of traditional districting criteria, I discuss two plans for Congressional districts rejected by the Texas State Legislature during 1991 as well as an alternative I have developed.

46. Analyses of two alternative plans found in the State of Texas' submission to the U.S. Department of Justice indicates to me that the state had available to them at least two plans that were more narrowly tailored than the plan that Texas adopted and for which it sought preclearance. The two plans are C500 (Senator Eddie Bernice Johnson's initial plan) and Z401C508 (the Pate plan). Senator Johnson's plan was offered to the Legislature and its committees in the Spring of 1991, while the plan created by Mr. Pate was offered as both committee and floor amendments during August 1991 by Rep. Gruesendorf from Tarrant County. Both plans would have been fair to racial and ethnic minorities in Texas by increasing the opportunity of those voters to elect candidates of choice in comparison to the plan of the

1980s, while at the same time the two plans are less violative of traditional districting criteria than is the current plan.

47. Using the computer resources of the Texas Legislative Council, I have created an alternative Congressional districting plan for the state of Texas to show that a more narrowly tailored plan can be constructed that pays more attention to traditional districting principles while still enabling African-American and Hispanic voters to elect candidates of choice from an equal number of Congressional districts as in the current plan.

48. Weber Plan 2 which will be offered as one of plaintiffs' exhibits at trial includes two African-American districts--one in Dallas County and one in Harris County; six Hispanic districts-one in far South Texas, one in El Paso County, two in Bexar County, one in South Texas with Nueces County as its major center, and one in rural Southwest Texas; and one district in Harris County subject to substantial African-American and Hispanic influence. These districts are designed to be more competitive in both the Democratic primary and general elections. in total and voting age population. Each of the minority-majority districts are also designed to be more compact than the comparable districts in the current state plan.

49. The minority-majority districts in Weber Plan 2 will enable African-Americans to elect a candidate of choice in Democratic primary and general elections in districts 18 and 30, while Hispanic voters will be able to elect candidates of choice in districts 15, 16, 20, 23, 27, and 28. Taking into account the patterns of group participation in recent past elections as well as the cross-over support from Anglos and Hispanics, African-American candidates such as Jesse Jackson and Morris

Overstreet would have been victorious in their respective elections in reconfigured districts 18 and 30 (see Attachment G). Likewise Hispanic candidates like Gonzalez, Morales, Guerrero, and Benevides would usually win elections within the confines of districts 15, 16, 20, 23, 27, and 28. Under the reconfigured Hispanic majority districts, Guerrero would have lost the general election in 1992 for Railroad Commissioner 3 in districts 20 and 28. However, she did comfortably win the Democratic primary election in those two districts. Based on these reconstituted election analyses, it also appears that district 29 would be competitive for both Hispanic and African-American candidates in the Democratic primary election and winnable in the general election. Thus, Weber Plan 2 is a fair plan to racial and ethnic minorities in Texas and has lines that pay more attention to traditional districting criteria than the current state plan.

Plaintiffs' Exhibit 037

Affidavit of Stefon R. Whiting, Sr.
from *Vera v. Richards*, heard in the United States District Court for the Southern District of Texas

Dated June 22, 1994

1. I am more than 18 years of age, and I have personal knowledge of the facts set forth in this affidavit.

2. I contract to Marc S. Zweben, P.C. as a private process server. At 8 P.M. on Tuesday, June 7, 1994, I picked up subpoenas duces tecum and notices of oral deposition duces tecum from Mr. Zweben, to be served on Mr. Matthew Hoyt Angle and Mr. Robert Mansker.

3. I attempted to serve Mr. Mansker and Mr. Angle as follows:

June 7, 1994:

I waited in the lobby of Mr. Mansker's apartment building at 1245 4th Street, S.W., Washington, D.C. 20024 from 8:30 P.M. to 10:30 P.M. I called his apartment (202/554-3708) from the lobby, and left two messages on his answering machine stating that I was a process server and that I had a subpoena for him from an attorney named Marc Zweben, and also providing my pager number. Mr. Mansker did not return my calls.

June 8, 1994:

I spent 4½ hours trying to serve Mr. Mansker at his office at the House Office Building, Annex 1, at 2nd Street and New Jersey Avenue , S.E., Washington, D.C. 20515, and Mr. Angle at his office at Room 2459 of the Rayburn Office Building, Washington, D.C. 20515.

I visited Mr. Mansker's office several times, and left messages with the receptionist, who said she did not know where Mr. Mansker was, that he would not be in all day, and that there was no phone number where he could be reached. I also spoke with an attorney named Scott Gordon, who told me that he did not know anything about Mr Mansker's whereabouts and told me to get out of the office or he would call the police.

I also visited Mr. Angle's office several times. Both receptionists said that they did not know where Mr Angle was, did not have a number where he could be reached, and could not say whether he would be coming in.

On the evening of June 8, 1994, I left several messages on both Mr. Mansker's and Mr. Angle's (703/524-3686) answering machines, again stating that I was a process server and that I had a subpoena from an attorney named Marc Zweben, and also providing my pager number. Neither Mr. Mansker nor Mr. Angle returned my calls. A woman who identified herself as Mrs. Angle said that she did not know where he was or when he would be home. Mr. Mansker did not return the calls that I made from the lobby. Nobody answered the door at the Hoyt residence.

June 9, 1994:

I visited Mr. Angle's office at approximately 9:30 A.M. The receptionist told me that Mr. Angle was not in, and to try back a little later. I returned at approximately 11:00 A.M., and the receptionist told me that Mr. Angle was working out of his house. I went to Mr. Angle's house at 4826 North 22nd Road, Arlington, Virginia 22207 at approximately 4:40, and nobody answered the door. I waited in my car for several hours, and saw Ms. Angle go in to the house at approximately 7:00 P.M. I approached Ms. Angle and told her that I had a package for her husband from Marc Zweben. She said that he was not home. I then called Mr. Zweben, who told me to give the subpoena and notice to Ms.

Angle. I returned to the house, at approximately 7:15 P.M. Ms. Angle was sitting on the front porch. I gave the subpoena and notice to her, and left.

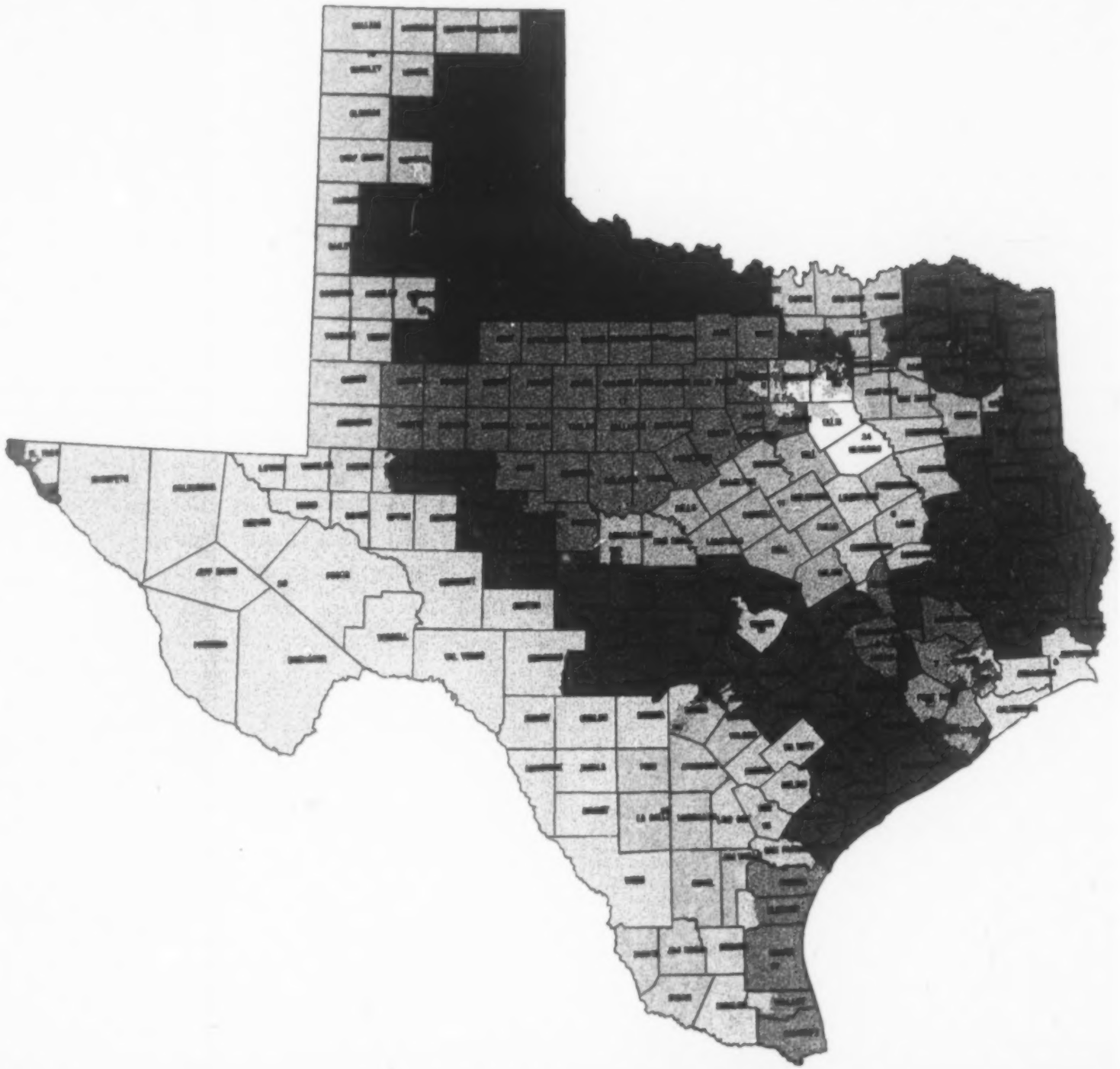
I visited Mr. Mansker's office twice in the morning, for a total of approximately one and one half hours. The receptionist would not let me in the office, and told me that Mr. Mansker would not be in. I visited Mansker's apartment building at approximately 7:45 P.M., after I gave Ms. Angle the subpoena and notice. I called up from the lobby and left a message on Mr. Mansker's answering machine giving my name, explaining that I had a subpoena and notice of deposition from Marc Zweben, and that he could reach me by leaving his number on my pager or a message on my answering machine. I waited at the apartment building, both in the lobby and outside in my car, for approximately one and one half hours. Mr. Mansker did not show up, and he never returned my calls.

Declaration Pursuant to 28 USC § 1746

I declare under penalty of perjury that the foregoing is true and correct. Executed on *June 22, 1994*.

/s/
Stefon R. Whiting, Sr.

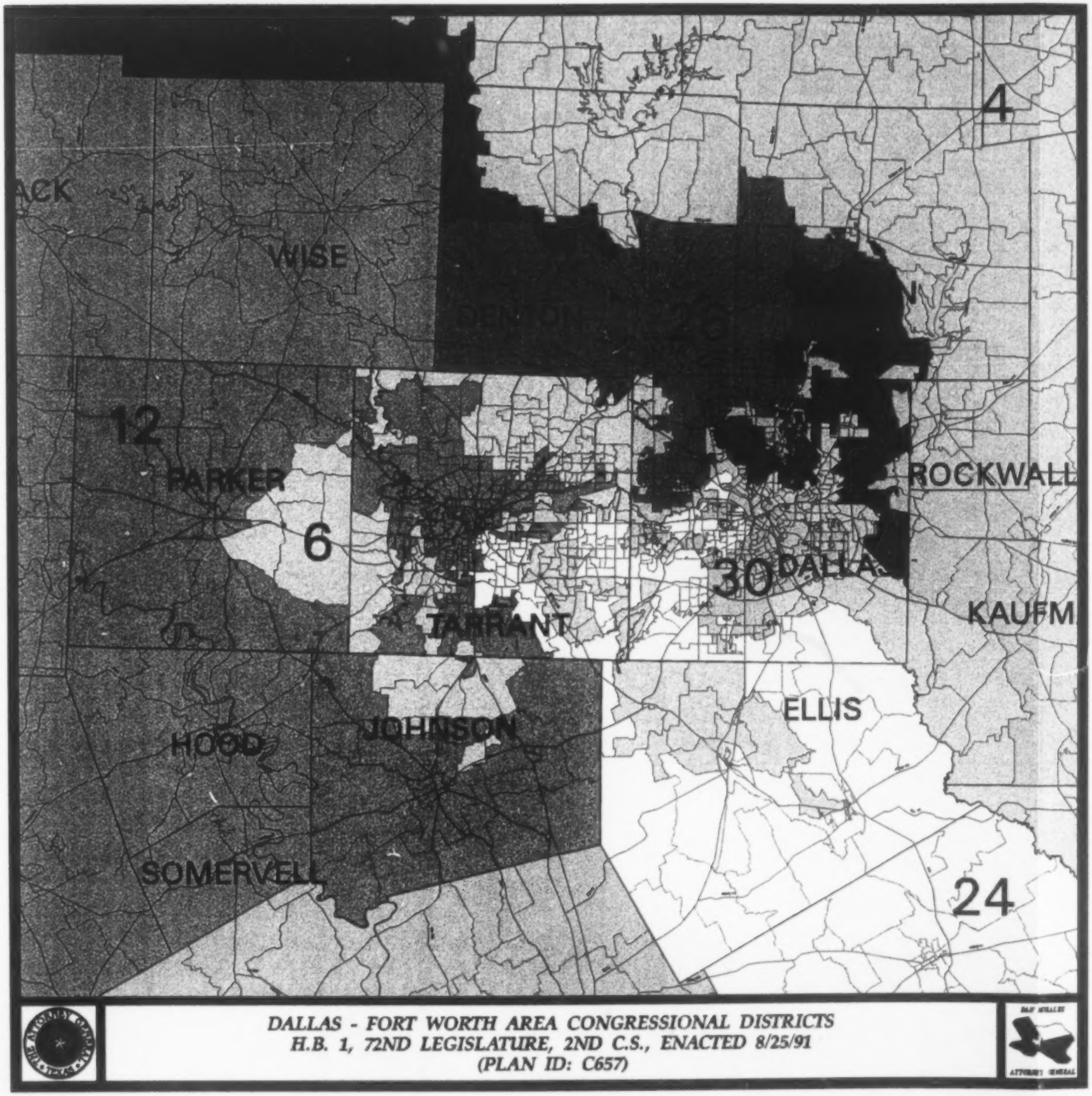
State's Exhibit 8(1)



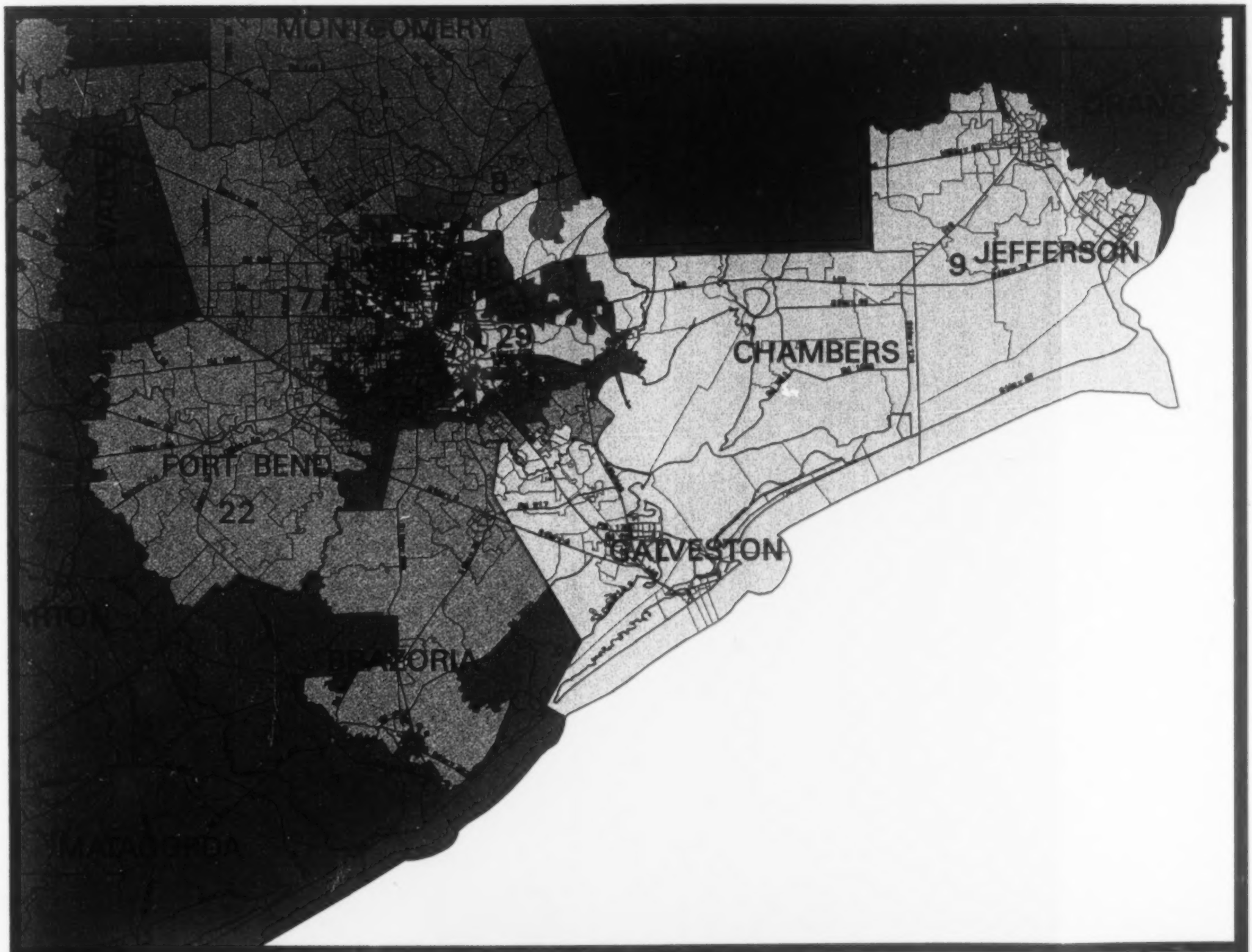
TEXAS CONGRESSIONAL DISTRICTS
House Bill One (Plan-ID: C657)

192

State's Exhibit 8(2)

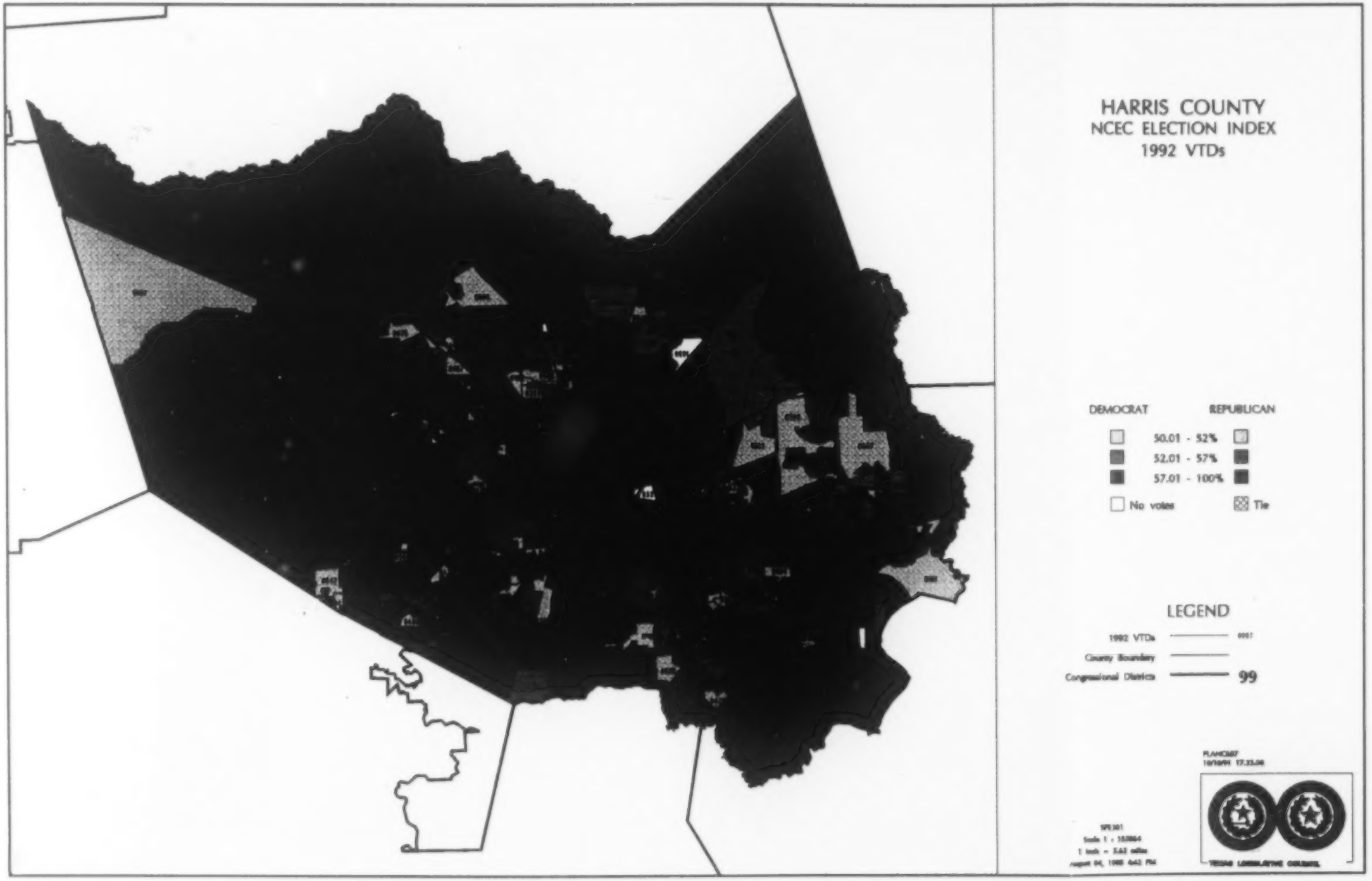


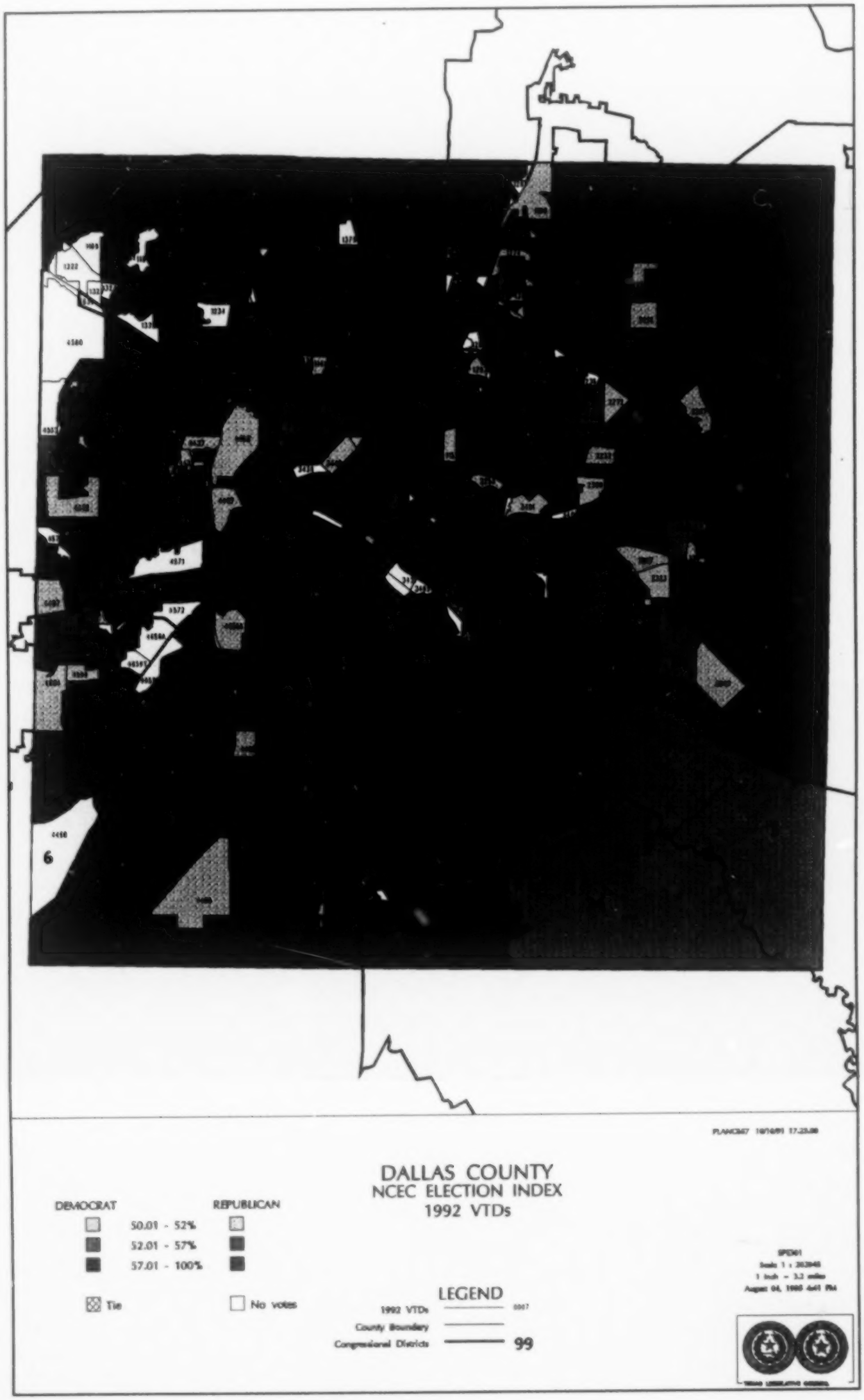
DALLAS - FORT WORTH AREA CONGRESSIONAL DISTRICTS
H.B. 1, 72ND LEGISLATURE, 2ND C.S., ENACTED 8/25/91
(PLAN ID: C657)



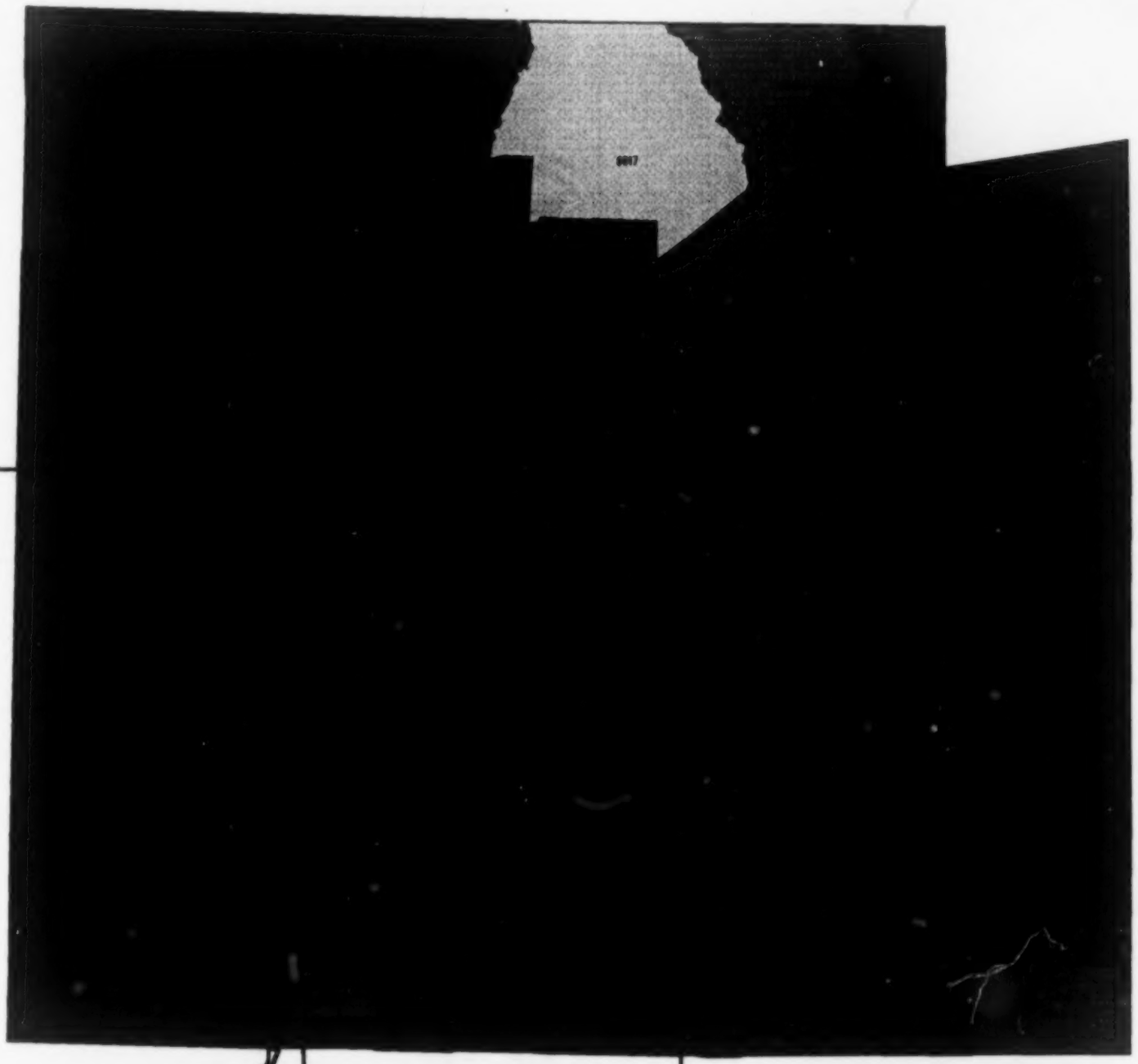
HOUSTON AREA CONGRESSIONAL DISTRICTS
H.B. 1, 72ND LEGISLATURE, 2ND C.S., ENACTED 8/25/91
(PLAN ID: C657)

State's Exhibit 9A(1)




6
DALLAS COUNTY
NCEC ELECTION INDEX
1992 VTDs
DEMOCRAT
REPUBLICAN
50.01 - 52%
52.01 - 57%
57.01 - 100%
Tie
No votes
LEGEND
1992 VTDs
County Boundary
Congressional Districts
99

State's Exhibit 9B



COLLIN COUNTY
NCEC ELECTION INDEX
1990 VTDs

DEMOCRAT REPUBLICAN

	50.01 - 52%	
	52.01 - 57%	
	57.01 - 100%	
	No votes	Tie

LEGEND

1990 VTDs ——— 1021
County Boundary ———
Congressional District ——— 99

PLANC607
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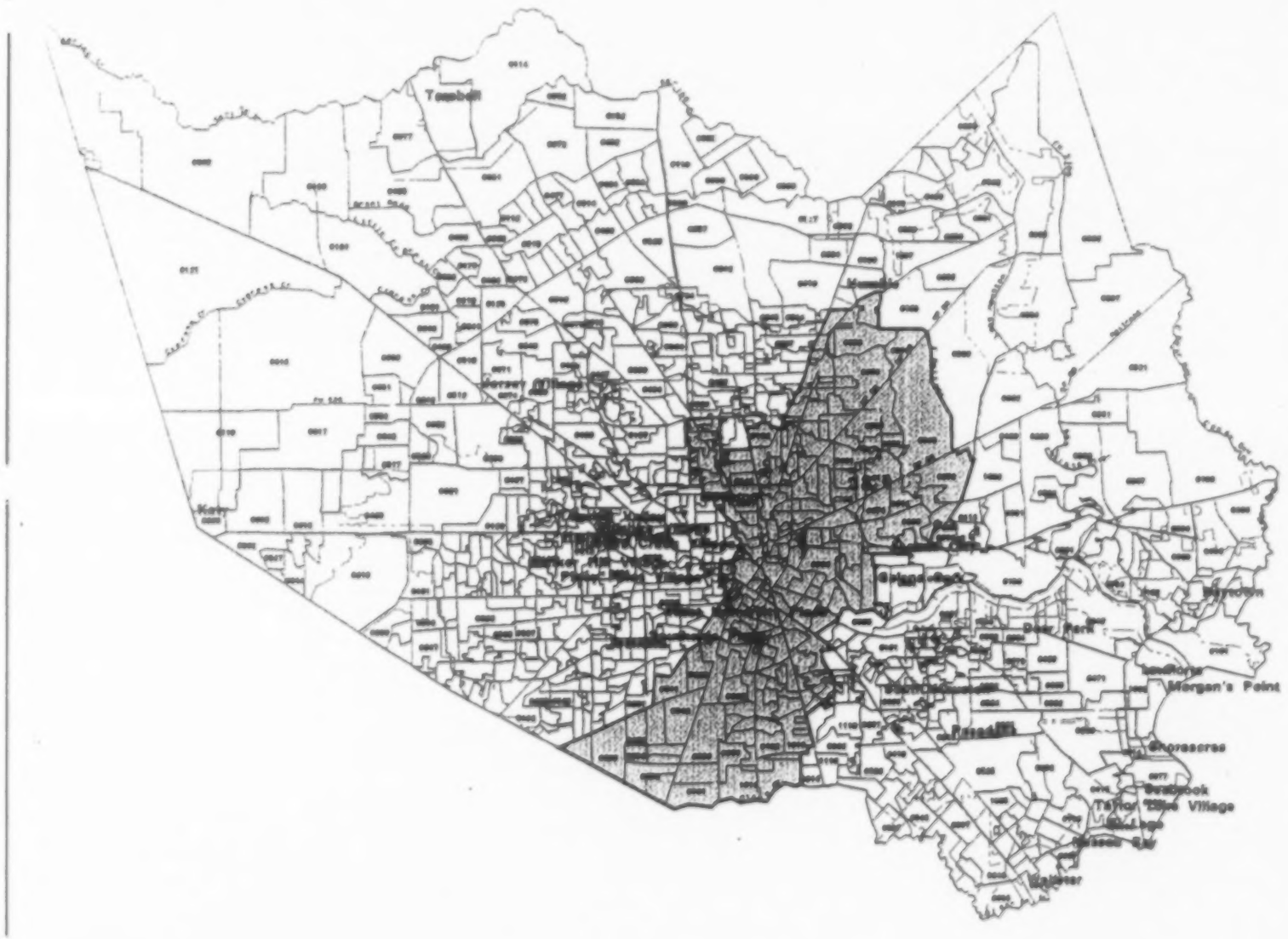
TEXAS LEGISLATIVE COUNCIL

State's Exhibit 12A



HARRIS COUNTY
Proposed Congressional Districts

LEGEND

1993 Special Precincts ——— 0000
City Limits - - - - - - Austin

STATE'S EXHIBIT A
H-94-0277

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1 inch = 5.62 miles
June 22, 1994 8:30 AM

06/21/94 16:31:29

TEXAS LEGISLATIVE COUNCIL

From State's Exhibit 12A
Summary Sheets of Texas Legislative Council
Plan Population Analysis with County Subtotals

PAR200B
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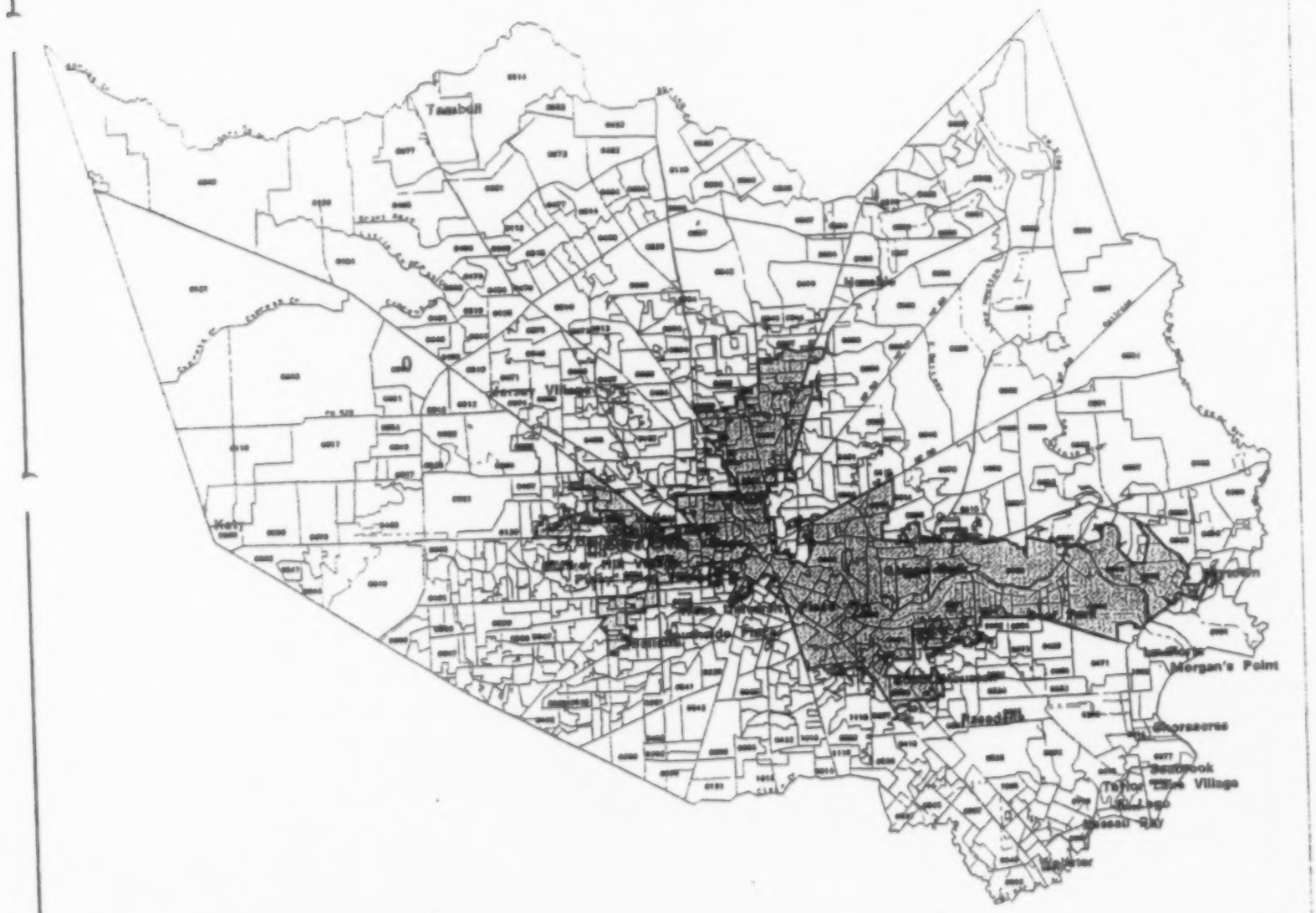
TEXAS LEGISLATIVE COUNCIL - PAR
PLAN POPULATION ANALYSIS WITH COUNTY SUBTOTALS
CONGRESSIONAL DISTRICTS

06/24/94
10:41:25
PAGE 1

-----COUNTY------	----------POPULATION----------						----------% OF POPULATION----------				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
DIST. 018 TOTALS	566,194	287,635	188,738	471,346	85,353	9,495	50.8	33.3	83.2	15.1	1.7
HARRIS (20%)	566,194	287,635	188,738	471,346	85,353	9,495	50.8	33.3	83.2	15.1	1.7

State's Exhibit 12B



HARRIS COUNTY
Proposed Congressional Districts

LEGEND

1993 Special Precincts ——— ####
City Limits - - - - - - Austin

STATE'S #12
EXHIBIT B
11-94-0277

88D340
Scale 1 : 355864
1 inch = 5.62 miles
June 24, 1994 10:15 AM

06/24/94 08:38:30

TEXAS LEGISLATIVE COUNCIL

From State's Exhibit 12B
Summary Sheets of Texas Legislative Council
Plan Population Analysis with County Subtotals

PAR200B
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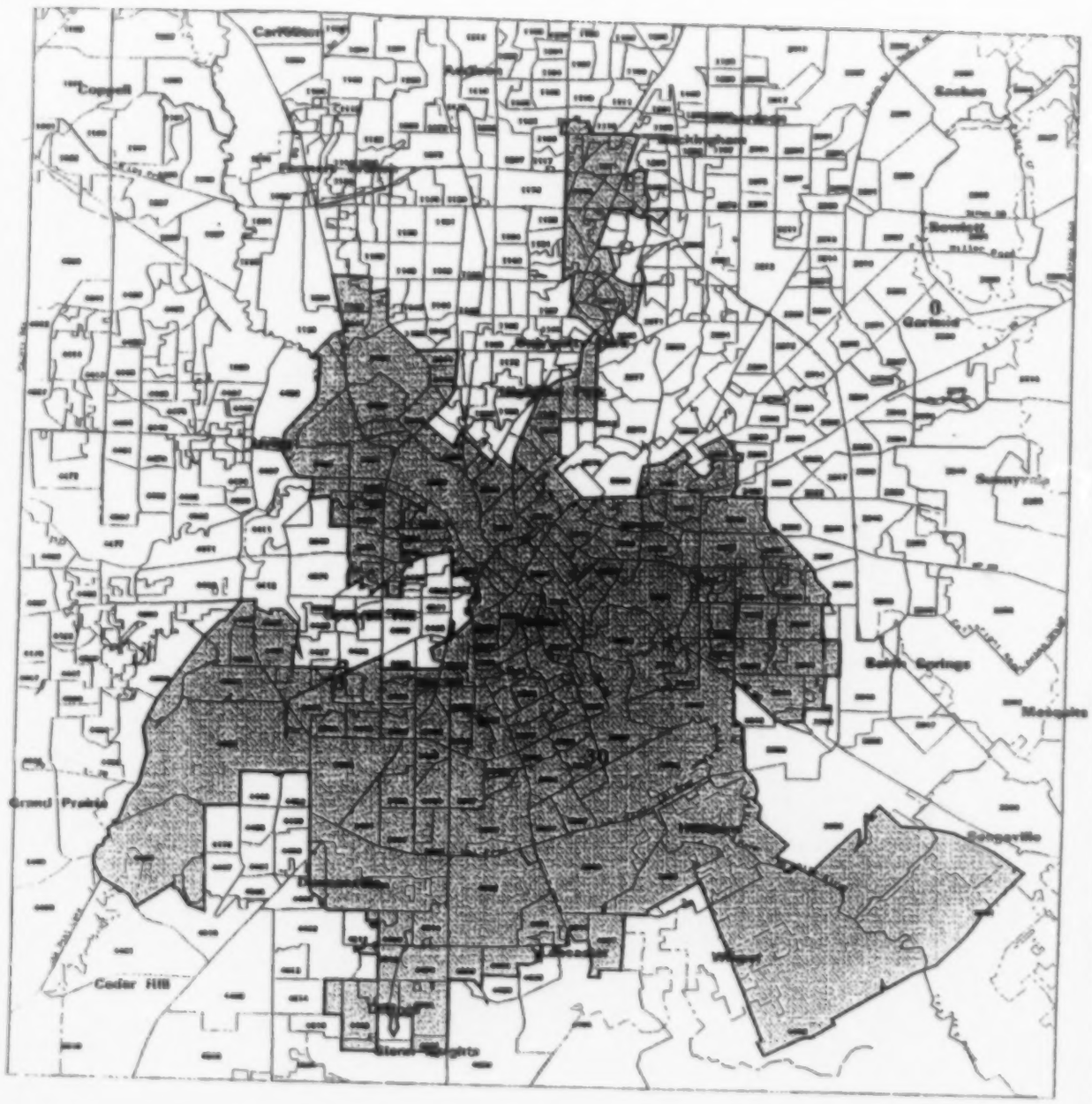
PLANID: 062494 9:28:30

TEXAS LEGISLATIVE COUNCIL - PAR
PLAN POPULATION ANALYSIS WITH COUNTY SUBTOTALS
CONGRESSIONAL DISTRICTS

06/24/94
10:49:32
PAGE 1

-----COUNTY-----	----------POPULATION----------						----------% OF POPULATION----------				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
DIST. 029 TOTALS	566,210	63,856	336,651	396,709	157,153	12,348	11.3	59.5	70.1	27.8	2.2
HARRIS (20%)	566,210	63,856	336,651	396,709	157,153	12,348	11.3	59.5	70.1	27.8	2.2



DALLAS COUNTY
Proposed Congressional Districts

LEGEND

1993 Special Precincts

City Limits — Austin

STATE'S EXHIBIT C
11-94-0277

TEXAS LEGISLATIVE COUNCIL

From State's Exhibit 12C
Summary Sheets of Texas Legislative Council
Plan Population Analysis with County Subtotals

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PLANID: 062494 8:34:43

TEXAS LEGISLATIVE COUNCIL - PAR
PLAN POPULATION ANALYSIS WITH COUNTY SUBTOTALS
CONGRESSIONAL DISTRICTS

06/24/94
10:33:15
PAGE 1

-----COUNTY-----	----------POPULATION----------						----------% OF POPULATION----------				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
DIST. 030 TOTALS	566,166	281,365	112,175	388,588	166,040	11,538	49.7	19.8	68.6	29.3	2.0
DALLAS (31%)	566,166	281,365	112,175	388,588	166,040	11,538	49.7	19.8	68.6	29.3	2.0

State's Exhibit 14

FINAL REPORT OF ALLAN J. LICHTMAN
Vera v. Richards

Dated June 26, 1994

BACKGROUND AND EXPERIENCE

1. My name is Allan J. Lichtman and I am an adult resident citizen of the State of Maryland.

2. I am a Professor of History and formerly Associate Dean of the College of Arts and Sciences at The American University in Washington, D.C. I received my BA in History from Brandeis University in 1967 and my PhD in History from Harvard University in 1973, with a specialty in the mathematical analysis of social science data. My areas of expertise include political history, voting analysis, and quantitative methodology. A copy of my curriculum vitae, which accurately sets forth my professional qualifications and experience, is attached hereto.

3. I am the author of numerous scholarly works on quantitative methodology in social science. This scholarship includes articles in such academic journals as Political Methodology, Journal of Interdisciplinary History, and Social Science History. I have also coauthored with Dr. Laura Langbein, Ecological Inference, a standard text on the subject of inferring the behavior of population groups from data collected for political units. In addition, I have published articles on the application of the Voting Rights Act to social science analysis. This work includes articles in such journals as Journal of Law and Politics, La Raza, Evaluation Review, and National Law Journal.

4. My scholarship includes the use of quantitative and qualitative techniques to perform political and historical studies of voting, published in such academic journals as The Proceedings of the National Academy of Sciences, The American Historical Review, and The Journal of Social History. Quantitative and historical analysis also grounds my books, Predudice and the Old Politics: The Presidential Election of 1928 and The Thirteen Keys to the Presidency (co-authored with Ken DeCell).

5. I have worked as a consultant or expert witness for both plaintiffs and defendants in more than fifty federal voting rights cases. In addition, I have served as an expert witness in several state-wide redistricting cases including North Carolina, Texas, Virginia, New York, Florida, Louisiana, Maryland, Massachusetts, and Michigan. My experience includes work for Democratic and Republican interests, as well as for nonpartisan commissions. I have been admitted as an expert witness in voting rights, political history, political systems, statistical methodology, quantitative analysis of voting, and socioeconomic analysis, among other matters, in more than forty federal court cases in which I have presented oral or written testimony.

PURPOSE OF ANALYSIS

6. This inquiry compares the current state plan for electing congressional representatives in Texas with alternative plans proposed by plaintiffs in this litigation. The plans will be analyzed retrospectively, considering their likely consequences on the 1992 elections from the perspective of the 1991 redistricting process. The plans will also be analyzed prospectively, considering their likely consequences for the 1994 elections. The study considers whether there is a non-racial explanation for the configuration of the congressional districts in Texas. It

also explores the extent to which elections in Texas are polarized along racial lines, and the extent to which various plans provide minorities opportunities to elect candidates of their choice. The study will also briefly consider issues raised in the June 18, 1994 report of plaintiffs' expert, Dr. Ronald Weber. In particular, the study will examine the following questions:

1. How effectively do the state plan and alternatives proposed by plaintiffs meet a non-racial goal of protecting congressional incumbents?

2. To what extent are elections in the areas of the state's minority districts characterized by racially polarized voting among Anglos, blacks, and Hispanics?

3. How effectively do the state plan and alternatives proposed by plaintiffs provide minorities the opportunity to elect candidates of their choice?

SUMMARY OF FINDINGS

7. The social science literature indicates that redistricting is an inherently political process. Plans for the crafting of districts have political consequences that are understood and intended by the crafters. A common goal of redistricting is the protection of incumbent officeholders. Incumbency protection may extend to officeholders of the party in control of the redistricting process or to officeholders of both major parties. Rationales offered for legislatures adopting a goal of incumbency protection include the preservation of the seniority and influence of the congressional delegation.[1]

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[1] For a discussion of the political nature of redistricting and of incumbency protection see generally, Bruce Cain, The Reapportionment Puzzle (Berkeley: University of California Press, 1984).

8. Texas elections in the areas in which the state created majority-minority districts are characterized by racially polarized voting between Anglos and minorities. Detailed analysis of primary elections presented in this study also shows that racially polarized voting occurs independently of party, within Democratic primary elections.

9. As indicated in the detailed demographic data presented in Appendix 1 of this report, the state's plan and three alternative plans proposed by plaintiffs -- their own plan developed by Dr. Ronald Weber and two plans developed during the redistricting process --all create nine districts with voting-age majorities of non-Anglo persons.[2] In the state's plan and the three alternatives, African-Americans are the predominant minority group in two of the nine minority districts and Hispanics are the predominant minority group in the remaining seven districts. However, there are clear political, non-racial reasons why the Texas legislature would reject any of the plaintiffs' alternatives (or other similar plans) in favor of its own alternative. All three alternative plans fall well short of the legislative goal of protecting congressional incumbents, both Democrats and Republicans. In contrast to the state's plan, each of the alternatives places in jeopardy at least 4 and as many as 7 incumbents, nearly all of them Democrats.

10. The alternative plans also reduce opportunities for minority voters in Texas to elect candidates of their choice and participate fully in the political process. This is particularly true of the plan crafted by plaintiffs' expert.

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[2] Plaintiffs' expert has identified these plans as a plan developed by then State Senator Eddie Bernice Johnson (C500) and a plan termed the "Pate Plan" ((E401C508). The Pate plan is a private plan with restricted access. But the state's Attorney General's Office has identified what it believes to be a virtually identical plan (C606) that was made public during the redistricting process. All analysis of the "Pate Plan" are based on C606.

Plaintiffs' alternative plan effectively eliminates a minority opportunity district within Harris County. It also reduces the Hispanic percentages of Districts 20 and 28 to the point where they are no longer more likely than not to elect an Hispanic candidate of choice. While plaintiffs' plan fragments Hispanic voting strength in Harris and Bexar Counties it simultaneously packs Hispanics into District 15 at levels substantially higher than under the state's plan. Plaintiffs' plan creates a new District 15 that increases Hispanic voting age population by some 8 percentage points, despite the fact that Dr. Weber criticizes District 15 in his report as an "overly safe" Hispanic district.[3]

DATA AND METHOD

11. This study relies on a data base of election returns developed by the state of Texas for minority v. Anglo elections covering the period from 1986 to 1992. Data for the 1994 primary elections was not available at the time of the completion of this report. The data base includes precinct-by-precinct election returns for the state as well as precinct-by-precinct voting-age population data. The state also racially identified the race of the candidates competing in these elections.

12. The state's Attorney General's office also provided detailed demographic analysis of the districts in the state's plan as well as the districts in the various alternative plans proposed by plaintiffs. This office also provided the placement of incumbents within the districts of the various plans.[4]

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[3] "Preliminary Report of Dr. Ronald Weber," June 18, 1994, p. 29.

[4] For alternative plans proposed by plaintiffs, the state was able to identify incumbent locations for all incumbents except Republicans Richard Armey in District 26 and Sam Johnson in District 3. The incumbency location of these representatives was

13. Standard statistical methods were used to assess the partisan implications of the various plans and to assess racially polarized voting. These methods are described in detail in the relevant sections of this report.

INCUMBENCY PROTECTION

14. The current state of Texas plan for electing congressional representatives substantially protects incumbents of both the Democratic and Republican parties. Table 1 indicates that all 27 members of the Texas delegation were seeking reelection in 1992. Only the three newly formed districts -- 28, 29, and 30 -- had open-seat contests. Table 1 further indicates that, under the

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kept in the initial districts for all alternative plans. No additional pairings of incumbents were created by this procedure.

TABLE 1
INCUMBENCY EFFECTS OF CURRENT STATE OF TEXAS CONGRESSIONAL PLAN*
(RESULTS EXPRESSED AS PERCENT DEMOCRATIC OF TWO-PARTY VOTE)**

DIST.	INCUMBENT PLACEMENT 1992	ACTUAL RESULTS 1992	PREDICTED PERCENT & PARTY OUTCOME 1992	INCUMBENT PLACEMENT 1994	PREDICTED PERCENT& PARTY OUTCOME 1994
1	D	100.00	64.78 (D)	D	64.78 (D)
2	D	56.30	65.80 (D)	D	65.80 (D)
3	R	.00	23.69 (R)	R	23.69 (R)
4	D	60.20	51.81 (D)	D	51.81 (D)
5	D	61.22	60.45 (D)	D	60.45 (D)
6	R	28.10	28.78 (R)	R	28.78 (R)
7	R	.00	22.81 (R)	R	22.81 (R)
8	R	23.30	23.22 (R)	R	23.22 (R)
9	D	55.20	58.04 (D)	D	58.04 (D)
10	D	72.08	63.07 (D)	D	63.07 (D)
11	D	67.34	60.13 (D)	D	60.13 (D)
12	D	62.77	60.04 (D)	D	60.04 (D)
13	D	60.35	61.58 (D)	D	61.58 (D)
14	D	71.41	57.57 (D)	D	57.57 (D)
15	D	60.43	57.46 (D)	D	57.46 (D)
16	D	51.89	63.12 (D)	D	63.12 (D)
17	D	66.09	62.30 (D)	D	62.30 (D)
18	D	66.52	71.78 (D)	O	65.90 (D)
19	R	22.62	32.39 (R)	R	32.39 (R)
20	D	100.00	59.52 (D)	D	59.52 (D)
21	R	24.77	26.97 (R)	R	26.97 (R)
22	R	31.10	27.96 (R)	R	27.96 (R)
23	D	39.29	58.04 (D)	R	46.28 (R)
24	D	59.80	59.73 (D)	D	59.73 (D)
25	D	57.49	60.24 (D)	O	54.36 (D)
26	R	26.89	23.20 (R)	R	23.20 (R)
27	D	56.55	58.83 (D)	D	58.83 (D)
28	O	100.00	61.31 (O)	D	67.19 (D)
29	O	65.86	60.64 (O)	D	66.52 (D)
30	O	74.02	67.22 (O)	D	73.10 (D)

* PREDICTED RESULTS BASED ON 1988 AND 1992 PRESIDENTIAL ELECTION RESULTS AND 1990 AND 1992 COURT OF CRIMINAL APPEALS RESULTS IN EACH DISTRICT.

** RESULTS OF 100% AND 0% INDICATE ELECTIONS WITH NO MAJOR-PARTY OPPOSITION, WON BY DEMOCRATIC AND REPUBLICAN CANDIDATES, RESPECTIVELY.

state's plan, no incumbents of either party are paired together in the same congressional district. Each member of Congress has the opportunity to compete for reelection in a district drawn to encompass only that particular member's home.

15. Actual results of Texas congressional elections, reported in Table 1 show that all but one incumbent -- Democrat Albert Bustamante in District 23 -- gained reelection. Special circumstances help explain Bustamante's defeat. At the time of the election he was under a cloud of charges of illegal and improper activities. Three months after the election, Bustamante and his wife were both indicted on federal felony charges.[5]

16. Further assessment of the current congressional districts is provided through the development of a multiple regression equation that, based on incumbency status and non-congressional election results in each district, estimates the two-party general election, congressional vote in each district. This is a standard approach to the partisan assessment of districts that I have used for examining congressional and state legislative plans in several other states, including Virginia, Maryland, Michigan, and New York. The Texas equation was developed by comparing the actual 1992 results in each district (excluding uncontested elections) with Democratic or Republican incumbency in each district as well as election results for the 1988 and 1992 presidential elections and all 1990 and 1992 Court of Appeals elections in the districts. The purpose of the equation is not to predict actual election results based on past elections, but to evaluate the underlying partisan structure of the districts based on incumbency and non-congressional elections. The equation can be applied to

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[5] Michael Barone and Grant Ujifusa, eds., National Journal, The Almanac of American Politics 1994 (Washington D.C., 1994), p. 1263; Phil Duncan, ed., Congressional Quarterly, Politics in America 1994 (Washington D.C., 1994), p. 1516.

estimating the partisan outcomes of reconfigured districts, based on the placement of incumbents and the distribution of the noncongressional votes in the newly developed districts.[6]

17. As indicated in Table 1, the prediction equation produced estimates of 1992 congressional election results in each district that closely parallel the outcomes of the actual 1992 contests. Results from the equation diverge from the actual outcome of the congressional elections only for the Bustamante defeat in District 23.[7] The final set of results reported in Table 1 indicate that, based on this year's incumbency status and 1988 to 1992 election results, the equation produces no anticipated changes in outcome for 1994, with predicted victories by all incumbents competing for reelection.[8] Changing political conditions and unique features of individual contests could produce different 1994 results, but the analysis shows that the underlying structure of the plan itself highly favors incumbents of both parties.

18. Plaintiffs' alternative plan has a fundamentally different structure than the state's plan, with distinct

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[6] For a general introduction to multiple regression analysis see, Hubert M. Blalock. Jr., Social Statistics (New York: McGraw Hill, 1979),451-497. For examples of applications to prediction equations for legislative election results see, for example, Amihai Glazer, Bernard Grofman, Marc Robbins, "Partisan and Incumbency Effects of 1970s Congressional Redistricting," American Journal of Political Science 30 (1987); Andrew Gelman and Gary King, "Estimating Incumbency Advantage Without Bias," American Journal of Political Science 34 (1990); Bruce E. Cain, "Assessing the Partisan Effects of Redistricting," American Political Science Review 79 (1985).

[7] The prediction equation has a squared correlation coefficient of .82, indicating that it can account for 82 percent of the variation from district to district in the Democratic percentage of the Texas congressional vote.

[8] Given that no new general elections have occurred since 1992, only changes in incumbency status will create a difference between the 1992 and 1994 results generated by the equation.

consequences for incumbents. The alternative plan would place in jeopardy one Republican incumbent and as many as seven Democratic incumbents. Based on the alignments of 1992, 11 incumbents would have been paired if the plan had been adopted at that time. Democrats would have been paired with Republicans in four districts (6, 19, 22, 28) including two Democrats in District 28, and Democrats would have been paired together in one district (4). In addition, Table 2 shows that incumbent Democratic representative Martin Frost would be placed in majority-minority District 30 in which African-American State Senator Eddie Bernice Johnson was also competing in 1992. This poses the possible loss of a Democratic incumbent in that districts or the possibility that an Anglo would be elected in the black-majority District 30 by solidifying a strong Anglo vote and drawing off sufficient black crossover votes.

19. Application of the prediction equation to election results obtained for the districts in the alternative plan shows that Republican incumbents would have been favored over Democratic incumbents in three of four of the districts in which members of the two parties are paired together. Moreover, Republican candidates would have been favored over Democratic candidates in all open seats created by the pairing of incumbents under plaintiffs' plan. If plaintiffs' plan had been in effect in 1992 the anticipated result based on incumbency and non-congressional elections would have been the defeat of one Republican incumbent and 6 to 7 Democratic incumbents. Thus, independent of race, this plan or any roughly comparable plan would have been anathema to a Democratic legislature seeking to protect incumbents.

20. Table 2 also reveals that similar consequences would be expected for 1994, under plaintiff's alternative plan. If adopted for the 1994 elections, the plan would pair 13 incumbents. Democrats would be paired with Republicans in four districts (6, 19, 22, and 28) including

two in District 28, and Democrats would be paired together in two districts (4 and 30). Republican incumbents are favored over Democratic incumbents in three of four districts in which members of the two parties are paired together. Finally, Table 2 reveals that, based on incumbency status and prior election results, Republican candidates would be favored over Democratic candidates in all open seats created by the pairing of incumbents under plaintiffs' plan.

21. If plaintiffs' plan was put into effect for 1994, the anticipated result would be a loss of six Democratic incumbents and one Republican incumbent. Actual results may be less favorable to Democrats, given that the party in control of the White House is almost always disadvantaged in midterm elections. The elections of 1934 are the only midterm elections in U.S. history in which the presidential party increased in percentage of seats in the House of Representatives.[9]

22. Plaintiffs' expert Dr. Ronald Weber has also put forth two additional plans that had been drawn during the redistricting process: one developed by then State Senator Eddie Bernice Johnson (C500) and another known as the "Pate Plan" (E401C508). As with plaintiffs' alternative plan, these plans fail to meet the state's goal of incumbency protection. Independent of race, the Johnson plan was inconsistent with this objective of the redistricting process.

23. The Johnson plan places in jeopardy one Republican incumbent and as many as four Democratic incumbents. Table 3 reveals that based on the alignments of 1992, 7 incumbents would have been paired if the plan had been adopted at that time. One Democrat would have been paired with one Republican in one district (22), two Democrats would have been paired with one Republican

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[9] Allan J. Lichtman and Ken DeCell, The Thirteen Keys to the Presidency (Lanham: Madison Books, 1990), p. 255.

in one district (18), and two Democrats would have been paired together in one district (30). In addition, incumbent Democratic representatives Martin Frost and John Bryant would have been placed in majority-minority District 30 in which African-American State Senator Eddie Bernice Johnson was also competing. This poses the possible loss of two Democratic incumbents in that district or the possibility that an Anglo would be elected in the black-majority

TABLE 3
INCUMBENCY EFFECTS OF
EDDIE BERNICE JOHNSON PLAN (C500)
STATE OF TEXAS CONGRESSIONAL ELECTIONS *

DISTRICT	INCUMBENT PLACEMENT 1992	PREDICTED PERCENTAGE RESULTS & OUTCOMES 1992	INCUMBENT PLACEMENT 1994	PREDICTED PERCENTAGE RESULTS & OUTCOMES 1994	PREDICTED CHANGE IN INCUMBENCY 1992	1994
1	D	65.58 (D)	D	65.58 (D)		
2	D	60.87 (D)	D	60.87 (D)		
3	R	26.45 (R)	R	26.45 (R)		
4	D	51.67 (D)	D	51.67 (D)		
5	O	46.75 (R)	O	46.75 (R)		
6	R	31.75 (R)	R	31.75 (R)		
7	O	30.00 (R)	O	30.00 (R)		
8	R	24.43 (R)	R	24.43 (R)		
9	D	60.20 (D)	D	60.20 (D)		
10	D	62.41 (D)	D	62.41 (D)		
11	D	59.70 (D)	D	59.70 (D)		
12	D	55.29 (D)	D	55.29 (D)		
13	D	59.13 (D)	D	59.13 (D)		
14	O	47.98 (R)	O	47.98 (R)		
15	D	61.23 (D)	D	61.23 (D)		
16	D	62.76 (D)	D	62.76 (D)		
17	D	61.17 (D)	D	61.17 (D)		
18	2D/R	65.57 (D)	R	65.57 (D)	-1D/1R	-1R
19	R	35.67 (R)	R	35.67 (R)		
20	D	55.73 (D)	D	55.73 (D)		
21	R	29.44 (R)	R	29.44 (R)		
22	D/R	34.31 (R)	D/R	34.31 (R)	-1D	-1D
23	D	58.94 (D)	R	47.18 (R)		
24	O	61.48 (R)	O	61.48 (R)		
25	O	48.77 (R)	O	48.77 (R)		
26	R	26.18 (R)	R	26.18 (R)		
27	D	59.15 (D)	D	59.15 (D)		
28	O	57.57 (D)	D	57.57 (D)		
29	O	53.04 (D)	D	58.92 (D)		
30	2D	69.49 (D)	3D	69.49 (D)	-1D**	-2D

* PREDICTED RESULTS BASED ON 1988 AND 1992 PRESIDENTIAL ELECTION RESULTS AND 1990 AND 1992 COURT OF CRIMINAL APPEALS RESULTS IN DISTRICT.

** IN 1992 THE PLAN WOULD HAVE PLACED INCUMBENT DEMOCRATIC CONGRESSMAN MARTIN FROST AND INCUMBENT CONGRESSMAN JOHN BRYANT IN BLACK PLURALITY DISTRICT 30, IN WHICH BLACK STATE SENATOR EDDIE BERNICE JOHNSON WAS COMPETING.

District 30 by solidifying a strong Anglo vote and drawing off sufficient black crossover votes. Application of the prediction equation to election results obtained for the districts in the Johnson plan shows that if the Johnson plan had been adopted in 1992, the anticipated result based on incumbency and non-congressional elections would have been the defeat of one Republican incumbent and 3 to 4 Democratic incumbents.

Thus, independent of race, this plan would not have fulfilled the objectives of a Democratic legislature seeking to protect incumbents.

24. Table 3 also reveals that similar consequences would be expected for 1994, under the Johnson plan. If adopted for the 1994 elections, the plan would pair 5 incumbents. One Democrat would be paired with one Republican in one district (22), and three Democrats would have been paired together in one district (30). If the Johnson plan was put into effect for 1994, the anticipated result would be a loss of three Democratic incumbents and one Republican incumbent. Again, actual results may be less favorable to Democrats in this midterm election.

25. The equivalent of the Pate plan (C606) places in jeopardy one Republican incumbent and as many as six Democratic incumbents. Table 4 reveals that based on the alignments of 1992, 8 incumbents would have been paired if the plan had been adopted at that time. One Democrat would have been paired with one Republican in one district (20), and two Democrats would have been paired together in three districts (13, 24 and 25). In addition, incumbent Democratic

TABLE 4
INCUMBENCY EFFECTS OF
PATE EQUIVALENT PLAN (C606)
STATE OF TEXAS CONGRESSIONAL ELECTIONS *

DISTRICT	INCUMBENT PLACEMENT 1992	PREDICTED PERCENTAGE RESULTS & OUTCOMES 1992	INCUMBENT PLACEMENT 1994	PREDICTED PERCENTAGE RESULTS & OUTCOMES 1994	PREDICTED CHANGE IN INCUMBENCY 1992	1994
1	D	64.00 (D)	D	64.00 (D)		
2	D	60.01 (D)	D	60.01 (D)		
3	R	25.95 (R)	R	25.95 (R)		
4	D	38.58 (R)	D	38.58 (R)	-1D	-1D
5	O	39.22 (R)	O	39.22 (R)		
6	R	39.10 (R)	R	39.10 (R)		
7	R	23.95 (R)	O	23.95 (R)		
8	O	31.03 (R)	R	31.03 (R)		
9	D	64.55 (D)	D	64.55 (D)		
10	D	62.42 (D)	D	62.42 (D)		
11	D	61.55 (D)	D	61.55 (D)		
12	D	59.89 (D)	D	59.89 (D)		
13	2D	55.30 (D)	2D	55.30 (D)	-1D	-1D
14	D	51.22 (D)	D	51.22 (D)		
15	D	57.69 (D)	D	57.69 (D)		
16	D	62.79 (D)	D	62.79 (D)		
17	O	56.01 (D)	D	56.01 (D)		
18	R	59.59 (D)	D/R	65.57 (D)	-1R	-1R
19	R	34.11 (R)	R	34.11 (R)		
20	D/R	45 90 (R)	D/R	45 90 (R)	-1D	-1D
21	D	41.10 (R)	R	41.10 (R)	-1D	
22	R	27.83 (R)	R	27.83 (R)		
23	O	56.87 (D)	D	62.75 (D)		
24	2D	76.39 (D)	3D	76.39 (D)	-1D	-2D
25	2D	51.71 (D)	O	45.83 (R)	-1D	
26	R	30.50 (R)	R	30.50 (R)		
27	D	60.61 (D)	D	60.61 (D)		
28	O	59.62 (D)	O	59.62 (D)		
29	O	48.56 (R)	O	48.56 (R)		
30	O	64.46 (D)	O	64.46 (D)		

* PREDICTED RESULTS BASED ON 1988 AND 1992 PRESIDENTIAL ELECTION RESULTS AND 1990 AND 1992 COURT OF CRIMINAL APPEALS RESULTS IN DISTRICT.

** IN 1992 THE PLAN WOULD HAVE PLACED INCUMBENT DEMOCRATIC CONGRESSMAN MARTIN FROST AND INCUMBENT CONGRESSMAN JOHN BRYANT IN BLACK PLURALITY DISTRICT 30, IN WHICH BLACK STATE SENATOR EDDIE BERNICE JOHNSON WAS COMPETING.

representatives Martin Frost and John Bryant would have been placed in majority-minority District 24 in which African-American State Senator Eddie Bernice Johnson was also competing in 1992. This poses the same situation as that created in the Johnson plan described above. Application of the prediction equation to election results obtained for the districts in the Pate equivalent plan shows that if the Pate equivalent plan had been adopted in 1992, the anticipated result based on incumbency and non-congressional elections would have been the defeat of one Republican incumbent and 6 Democratic incumbents. Again, independent of race, this plan would not have fulfilled the objective of incumbent protection.

26. Table 4 also reveals that similar consequences would be expected for 1994, under the Pate equivalent plan. If adopted for the 1994 elections, the plan would pair 9 incumbents. One Democrat would be would be paired with one Republican in two districts (18, and 20), two Democrats would have been paired together in one districts (13), and three Democrats would have been paired together in one districts (24). If plaintiffs' plan was put into effect for 1994, the anticipated result would be a loss of five Democratic incumbents and one Republican incumbent. Again, actual results may be less favorable to Democrats in this midterm election.

MINORITY OPPORTUNITIES : RACIALLY POLARIZED VOTING

27. The state's plan, the plaintiffs' alternative plan, and Johnson's plan all create 9 districts with non-Anglo population and voting-age populations of about 50 percent or more.[10] All three plans also create 21 districts with

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[10] One of the 9 districts in the alternative plan (29) has a 54.9 percent black plus Hispanic population percentage and a 49.6% black plus Hispanic voting-age population. Its Anglo voting age

Anglo voting age populations greater than 60 percent. These districts can be categorized as "safe" seats for the candidates of choice of Anglo voters, or minimally as seats in which Anglos candidates of choice are more likely than not to gain election. Thus in a state with a 61 percent Anglo population and a 64 percent Anglo voting age population, 70 percent of the seats (21 of 30) under all plans are safe seats for Anglo candidates of choice, or minimally seats in which the Anglo candidate of choice is more likely than not to be elected.[11] The main differences among the plan lies in their distribution of minorities and Anglos into the remaining nine districts.

28. Of importance to a legislature seeking to assess plans with respect to complying with Section 5 and Section 2 of the Voting Rights Act is the presence of polarized voting between Anglo and minority voters. Such polarized voting is evident in Texas elections, whether analysis is limited to the period through 1990 or updated to include the 1992 elections.[12] Racial polarization in voting takes place independent of party, within the Democratic primary elections that are crucial to the electoral success of the candidates of choice of minority voters.

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percentage is 46.7 percent. Members of other races account for the remaining 3.7 percent.

[11] The term "safe" seat is often used with a variety of meanings. By "safe" seat for either Anglos or a minority group Hispanics I do not mean a seat that is predetermined to elect an Anglo or a minority candidate of choice. Rather I mean a seat that, based on past electoral patterns, would be projected to provide a substantial electoral majority in primary and general elections to an Anglo or a minority candidate of choice. See, Allan J. Lichtman and Gerald Hebert, "A General Theory of Vote Dilution," La Raza (1993), p. 13-14.

[12] The Attorney General's Office is still engaged in processing 1994 primary election results. The analysis will be updated if such results become available.

29. Within Democratic primary elections voting is polarized along racial lines in all of the areas in which the state created minority districts. Appendix 2 of this report presents results of ecological regression analyses of minority v. Anglo Democratic primary elections, for the period 1986 to 1992, in all nine majority-minority districts created by the current state plan. The Appendix also includes a detailed methodological discussion. The analysis includes statewide elections, congressional and state legislative elections with at least 50% overlap in the district, and local elections (except local judicial elections) that overlap the entire district (or substantially all the district for districts with small overlaps outside a single county). To eliminate marginal candidacies, I have followed my past practice and used a minimum competitiveness standard of 15 percent.[13] The analysis includes an average of 16 elections per congressional districts. This is a far larger and less select corpus of primary elections that the elections chosen for analysis by plaintiffs' expert.[14]

30. Table 5 summarizes the results of the ecological regression analysis presented in Appendix 2, first for districts with Hispanic pluralities and second for districts with black pluralities under the state's plan. The Table provides four summary measures for the black and Hispanic districts: all elections, pre-1992 elections, non-judicial elections, and legislative elections (Congress and state legislature). Table 5 shows a usual pattern of substantial polarization across all districts and all categories of analysis. For the seven Hispanic Districts, Table 5 shows that in each of the four categories a mean of at least 77 percent of Hispanic voters voted for Hispanic candidates. In contrast, Table 5 shows that for

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[13] Under this standard, the minority candidate or candidates and the white candidate or candidates must receive at least 15 percent of the vote cast.

[14] Preliminary Weber Report, p. 23.

these districts a mean of 21 percent or less of Anglo voters voted for Hispanic candidates. For the two African-American Districts, Table 5 shows that in each of the four categories a mean of at least 75 percent of black voters voted for black candidates. In contrast, Table 5 shows that for these districts a mean of 34 percent or less of Anglo voters voted for black candidates. In three of four categories for the black districts, a mean of 25 percent or less of Anglo voters voted for black candidates.

31. The results of ecological regression analysis are also corroborated by an extreme case analysis that examines voting patterns in precincts with 90 percent or greater Anglo, Hispanic, and black voting-age populations respectively. Heavily Anglo

TABLE 5: SUMMARY ECOLOGICAL REGRESSION ANALYSIS: HISPANIC DISTRICTS MINORITY VS. ANGLO ELECTIONS CURRENT TEXAS CONGRESSIONAL DISTRICTS*

I. ALL ELECTIONS	MEAN % ANGLO VOTERS VOTING FOR HISP CANDS	MEAN % HISP. VOTERS VOTING FOR HISP CANDS
DIST. 15 (11 ELECTIONS)	26%	89%
DIST. 16 (18 ELECTIONS)	31%	74%
DIST. 20 (15 ELECTIONS)	15%	75%
DIST. 23 (10 ELECTIONS)	10%	80%
DIST. 27 (12 ELECTIONS)	29%	81%
DIST. 28 (9 ELECTIONS)	6%	79%
DIST. 29 (12 ELECTIONS)	5%	89%
MEAN ALL DISTRICTS	**17%**	**81%**

II. PRE-1992 ELECTIONS	MEAN % ANGLO VOTERS VOTING FOR HISP CANDS	MEAN % HISP. VOTERS VOTING FOR HISP CANDS
DIST. 15 (8 ELECTIONS)	22%	87%
DIST. 16 (11 ELECTIONS)	30%	79%
DIST. 20 (9 ELECTIONS)	6%	74%
DIST. 23 (8 ELECTIONS)	9%	81%
DIST. 27 (11 ELECTIONS)	27%	81%
DIST. 28 (8 ELECTIONS)	7%	78%
DIST. 29 (6 ELECTIONS)	5%	84%
MEAN ALL DISTRICTS	**15%**	**81%**

III. NON-JUDICIAL ELECTIONS	MEAN % ANGLO VOTERS VOTING FOR HISP CANDS	MEANS % HISP VOTERS VOTING FOR HISP CANDS
DIST. 15 (7 ELECTIONS)	27%	87%
DIST. 16 (14 ELECTIONS)	34%	72%
DIST. 20 (11 ELECTIONS)	20%	74%
DIST. 23 (6 ELECTIONS)	17%	79%
DIST. 27 (8 ELECTIONS)	33%	79%
DIST. 28 (5 ELECTIONS)	11%	77%
DIST. 29 (13 ELECTIONS)	6%	90%
MEAN ALL DISTRICTS	**21%**	**80%**

IV. LEGISLATIVE ELECTIONS	MEAN % ANGLO VOTERS VOTING FOR HISP	MEAN % HISP VOTERS VOTING FOR HISP CANDS
DIST. 15 (4 ELECTIONS)	27%	87%
DIST. 16 (4 ELECTIONS)	31%	64%
DIST. 20 (2 ELECTIONS)	29%	75%
DIST. 23 (2 ELECTIONS)	15%	74%
DIST. 27 (3 ELECTIONS)	32%	69%
DIST. 28 (2 ELECTIONS)	11%	72%
DIST. 29 (5 ELECTIONS)	2%	95%
MEAN ALL DISTRICTS	**21%**	**77%**

TABLE 5, CON'T.
SUMMARY OF ECOLOGICAL REGRESSION ANALYSIS:
BLACK DISTRICTS
BLACK VS. ANGLO ELECTIONS CURRENT TEXAS
CONGRESSIONAL DISTRICTS*

I. ALL ELECTIONS	MEAN % ANGLO VOTERS VOTING FOR BLACK CANDS	MEAN % BLACK VOTERS VOTING FOR BLACK CANDS
DIST. 18 (8 ELECTIONS)	26%	67%
DIST. 30 (6 ELECTIONS)	23%	83%
MEAN ALL DISTRICTS	**25%**	**75%**

II. PRE-1992 ELECTIONS	MEAN % ANGLO VOTERS VOTING FOR BLACK CANDS	MEAN % BLACK VOTERS VOTING FOR BLACK CANDS
DIST. 18 (5 ELECTIONS)	24%	67%
DIST. 30 (5 ELECTIONS)	15%	82%
MEAN ALL DISTRICTS	**20%**	**75%**

III. NON-JUDICIAL ELECTIONS	MEAN % ANGLO VOTERS VOTING FOR BLACK CANDS	MEAN % BLACK VOTERS VOTING FOR BLACK CANDS
DIST. 18 (5 ELECTIONS)	16%	69%
DIST. 30 (3 ELECTIONS)	11%	84%
MEAN ALL DISTRICTS	**14%**	**77%**

IV. LEGISLATIVE ELECTIONS	MEAN % ANGLO VOTERS VOTING FOR BLACK CANDS	MEAN % BLACK VOTERS VOTING FOR BLACK CANDS
DIST. 18 (1 ELECTION)	34%	84%
DIST. 30 (1 ELECTION)	34%	66%
MEAN ALL DISTRICTS	**34%**	**75%**

* SUMMARY BASED ON RESULTS IN APPENDIX 2.

precincts usually cast majority votes for Anglo candidates, heavily Hispanic precincts usually cast majority votes for Hispanic candidates, and heavily black precincts usually cast substantial majority votes for black candidates. Detailed results of extreme case analysis are reported in Appendix 3.

32. Dr. Weber does not in his report dispute the existence of racially polarized voting in Democratic primary elections. He notes that "The analyses of racial and ethnic polarization in voting in different recent elections held within the boundaries of the current majority-minority Congressional districts or within the old Congressional districts with substantial minority populations indicate that some racial or ethnic polarization in voting occurs." But Dr. Weber denies that the polarization is "legally or politically consequential" because candidates of choice of minorities prevailed in the minority districts.[15] But these districts were created to provide minorities reasonable opportunities to elect candidates of their choice. Victories by minority-preferred candidates in such districts does not mean that legally and politically significant racial bloc voting would not have occurred if districts had been configured differently to lower the percentages of minorities. In such a situation, if minority candidates had lost, then the state would have been vulnerable to a voting rights challenge.

33. Neither the ecological regression analyses in Appendix 2 nor the extreme case analysis in Appendix 3 show that blacks and Hispanics usually vote together as a bloc. Although there are some instances of apparent Hispanic/black coalitions, the results show that Hispanic

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[15] Preliminary Weber Report, p. 26.

and black voters did not usually both provide majority support for minority candidates.[16]

MINORITY OPPORTUNITIES: ALTERNATIVE PLANS

34. As indicated in Table 6, nearly as many voting age blacks and Hispanics are included in the 9 non-Anglo districts under the plan developed by plaintiffs' expert, in the 9 non-Anglo districts under the state's plan. Minorities, however, are distributed quite differently in the alternative as compared to the state's plan, with the result that the alternative plan reduces minority -- especially Hispanic -- opportunities to elect candidates of their choice. There is thus reason for a state legislature confronting Section 5 preclearance as well as Section 2 lawsuits to believe that a plan similar to the one submitted by plaintiffs would not pass muster under the Voting Rights Act.

35. Plaintiffs' alternative plan simultaneously packs and fragments Hispanic voting strength in Texas. The result is that Hispanic opportunities to elect candidates of their choice are diminished with respect to the current state plan and even with respect to the 1981 plan as well.

36. One consequence of plaintiffs' alternative plan is the elimination of a District in Harris County that provides Hispanics an opportunity to elect candidates of their choice. Even under the state's plan this is the most marginal of the state's majority-minority districts. As compared to the state's plan, plaintiffs' plan sharply reduces the Hispanic voting-age percentage of District 29 in Harris County. According to the demographic data on the two plans included in Appendix 1 of this report, the

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[16] There is no contention, moreover, in plaintiffs' expert report that blacks and Hispanics vote jointly as a bloc. (See Preliminary Weber Report, June 18, 1994).

Hispanic percentage of the voting age population is 55 percent under the state's plan, but only 30 percent under the plaintiffs' alternative plan. The reduction in Hispanic citizen voting-age population is likewise substantial. As indicated Appendix 1, the Hispanic citizen-voting age percentage falls from 43 percent under the state's plan to 21 percent under the plaintiffs' alternative plan.

37. As indicated in the analysis of Districts 18 and 29 above, voting in Harris County is usually polarized along racial lines in Hispanic versus Anglo Democratic primary elections.[17] The consequence of these voting patterns is that District 29 in plaintiffs' plan is sufficiently Democratic to elect an Hispanic nominee in the general election, but is not sufficiently Hispanic to provide Hispanic voters a reasonable opportunity to nominate a candidate of their choice.

38. Even under the more heavily Hispanic state plan, the Hispanic candidate of choice, Ben Reyes, narrowly failed to gain the 1992 Democratic congressional nomination in District 29. District voters nominated and ultimately elected Anglo candidate Gene Green.[18] The election was also decided by the narrowest of margins. In the runoff primary Green apparently prevailed over Reyes by 180 of 31,508 votes cast. A court challenge by Reyes resulted in a second runoff, in which Green prevailed by a margin of less than 2 percentage

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[17] Under either the state's plan or plaintiffs' alternative plan, District 29 is sufficiently Democratic, that the Democratic nominee is likely to prevail in a general election.

[18] This outcome does not indicate that the state's plan failed to provide Hispanic voters a reasonable opportunity to elect a candidates of their choice in District 29, based on information available at the time of the redistricting. It simply indicates that elections are not foregone conclusions based on racial composition alone. In addition to District 29, Congressional District 16, with a 66 percent Hispanic voting age population (second highest in the state under the current plan) is represented by an Anglo congressman: Ron Coleman.

points. The primary and runoff contests for the District 29 Democratic congressional nomination contests between Green and Reyes were also characterized by a high degree of racial polarization. In the two runoff contests, Anglos voted in approximate unanimity for Green, Hispanics voted overwhelmingly for Reyes, and blacks were roughly divided between the two. Given such polarized voting, the 25 percentage point reduction in Hispanic voting age population under plaintiffs' alternative plan would create a district in which it is highly unlikely that Hispanics could nominate a congressional representative of their choice.

39. Although the plaintiffs' alternative plan sharply reduces the Hispanic percentage in District 29, it sharply increases the Hispanic percentage in District 15, the most heavily Hispanic district in the state's plan. Plaintiffs' alternative plan increases the total Hispanic percentage in District 15 from 75 percent to 83 percent and the Hispanic voting age population from 70 percent to 78 percent. This packing of Hispanics in District 15 cannot be explained by a lack of citizenship status among Hispanics in District 15. To the contrary, as by the detailed demographic analysis of citizen population included in Appendix 1 of this report, the falloff between the Hispanic percentage of voting age population and the Hispanic percentage of citizen voting age population is much more limited in District 15 than in District 29. Under the state's plan, the Hispanic citizen voting-age population in District 15 is 65 percent. Under the plaintiffs' alternative plan, the Hispanic citizen voting-age population in District 15 is 73 percent.

40. Similarly, plaintiffs' alternative plan sharply increases the already substantial Hispanic percentage in District 23. Plaintiffs' alternative plan increases the total Hispanic percentage in District 23 from 63 percent to 77 percent and the Hispanic voting age percentage from 58 percent to 73 percent. Again, this increase cannot be explained by a lack of citizenship status among Hispanics in District 23. Under the state's plan, the Hispanic citizen

voting-age population in District 23 is 52 percent. Under the plaintiffs' alternative plan, the Hispanic citizen voting-age population in District 23 is 67 percent.

41. While packing heavy concentrations of Hispanics in Districts 15 and 23, plaintiffs' alternative plan simultaneously reduces the Hispanic percentages of three other districts -- 20, 27, and 28 --in the South Texas area. In District 20, plaintiffs' plan reduces the Hispanic percentage from 60.7 percent to 53.6 percent and the Hispanic voting age percentage from 56.1 percent to 49.5 percent. In District 27, plaintiffs' plan reduces the Hispanic percentage from 66.2 percent to 54.3 percent and the Hispanic voting age percentage from 61.4 percent to 50.3 percent. And, in District 28, plaintiffs' plan reduces the Hispanic percentage from 60.4 percent to 48.9 percent and the Hispanic voting age percentage from 56.5 percent to 44.5 percent. In terms of citizen voting age population, plaintiffs' plan reduces the Hispanic citizen voting-age population from 53.7 percent to 47.2 in District 20; from 57.7 percent to 49.3 percent in District 27, and from 53.7 percent to 42.1 percent in District 28.

42. The result of this fragmentation of Hispanic voting strength is to transform districts 20 and 28 into marginal Hispanic districts. Given the overwhelming propensity of Hispanics to vote Democratic and the Republican tendency of Anglos voters, even the Hispanic concentrations in Districts 20, 27, and 28 of plaintiffs' plan are sufficient to provide minorities a reasonable opportunity to nominate congressional representatives of their choice in Democratic primaries. However, for Districts 20 and 28, the reduction in Hispanic percentages sufficiently reduces Democratic voting strength to make it more likely than not that the nominee of choice of Hispanics will lose the general election. As indicated in Table 2, if plaintiffs' plan had been in effect in 1992, the Republican congressional nominee would have been favored in District 28. The Democratic nominee would

have been only narrowly favored in District 20, even with a Democratic and no Republican incumbent in that district. If the alternative plan were adopted for 1994, Table 2 further indicates that Republican congressional nominees would be favored in both Districts 20 and 28, given that there would now be both a Democratic and Republican incumbent in District 20.

43. The result of plaintiffs' plan is to create large deviations in the Hispanic percentage of its districts. Among it's majority-minority districts in which Hispanics are the predominant minority group, the voting age percentages of Hispanics range from 30 percent in District 29, to 45 percent in District 28, and to more than 78 percent in District 15. In contrast, the state's plan is more consistent in it's Hispanic percentages. Five of seven districts have Hispanic voting-age percentages ranging from 55 percent to 61 percent of the voting age population, one district has a percentage of 66 percent (16), and one district a percentage of 70 percent (15).[19]

44. It should be noted that during a redistricting process it is very difficult to define a range of minority concentration for districts that would provide reasonable opportunities for minorities to elect candidates of their choice without unduly packing minorities into districts.[20] This is particularly true in a state like Texas with three additional districts and the lack of a history of minority versus white congressional elections in many of the areas encompassed by the districts being created during the redistricting process. Thus, a state legislature can only be

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[19] It should also be noted that the reduction of the Hispanic percentage in these districts may create a more unfavorable situation for minority voters in terms of stimulating greater Anglo turnout and campaign efforts.

[20] By reasonable opportunity district, I mean a district that in which it is more likely than not that minority voters can nominate and elect a candidate of their choice. See, Allan J. Lichtman and Gerald Hebert, "A General Theory of Vote Dilution," La Raza (1993), ibid.

expected to develop approximate estimates of a range of reasonable concentrations of minority voters. Districts created in plaintiffs' alternative plan extend well beyond the range of Hispanic population in the state's districts, both at the low and high end of the distribution.

45. The simultaneous packing and fragmentation of Hispanic voting strength that characterizes plaintiffs' alternative plan reduces to 4 the number of districts that provide Hispanics a reasonable opportunity to elect candidates of their choice. Elimination of Districts 20, 28, and 29 for the reasons explained above, leaves only districts 15, 16, 23, and 27 as providing such opportunities. With respect to Hispanics, plaintiffs' alternative plan is clearly retrogressive with respect to the current state plan. It is arguably retrogressive as well with respect to the 1981 plan that included 5 districts with Hispanic voting-age populations of 55 percent or more. Thus, plaintiffs' alternative plan, if proposed as part of the post-1990 redistricting process, might well have failed to pass muster even under the retrogression test of Section 5 and would have made the state highly vulnerable to a Section 2 challenge as well.

46. Plaintiffs' alternative plan also raises questions about opportunities for black voters to elect candidates of their choice. Based on statistical data alone, both districts 18 and 30 under plaintiffs' alternative plan would appear to provide black voters reasonable opportunities to nominate and elect candidates of their choice.[21] However, plaintiffs' alternative plan pairs District 30's black incumbent representative Eddie Bernice Johnson with representative Martin Frost (currently in the District 24), a well-financed and experienced incumbent.

47. Given the limited opportunity thus far to analyze the Johnson plan, it appears that the main impact

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[21] I testified to this effect before the Texas legislature on behalf of Impac 2000 during the redistricting process.

of this plan in terms of minority opportunities is to weaken substantially the Hispanic district in Harris County. As with the plaintiffs' plan, the Johnson plan also creates the problem of placing incumbent congressman Martin Frost in the black-plurality district in Dallas County. . . . .

48. The Pate plan also weakens the Harris County Hispanic district, reducing its minority percentage from 55 percent to 47 percent. It also pairs Johnson with white incumbents. This plan, however, raises additional issues with respect to minority opportunities. Hispanic District 20 pairs Democratic Hispanic incumbent representative Henry Gonzalez with Anglo Republican incumbent Larry Smith. As a result of this pairing, Table 4 indicates that the Republican incumbent Smith would prevail over the Hispanic incumbent.

MINORITY OPPORTUNITIES: "OVERLY SAFE" DISTRICTS

49. Dr. Weber states in his report that several of the state's districts are "overly safe" for minority candidates of choice, specifically districts 15, 18, 20, 28, and 30. On the basis the review completed thus far I have the following concerns with his analysis.

50. First, the analysis is conceptually and methodologically flawed. Dr. Weber does not set forth systematic standards for determining whether a district is "overly safe" or not. Dr. Weber, for example, opines that District 15 is overly safe, but creates a new District 15 that increases the Hispanic voting age population by some 8 percentage points to nearly 80 percent. In addition, Dr. Weber's analysis of election outcomes in districts is based on a selected and skewed set of elections. A majority of elections examined are judicial elections. Moreover, all are statewide elections that minority candidates have won or came very close to winning and would bias the analysis

towards showing the relatively "safeness" of the minority districts. Of the four statewide primary elections examined by Dr. Weber, three were won outright by the minority candidates: 53.9 percent for the Attorney General candidate in 1990, 57.6% for the Court of Criminal Appeals P1. 4 candidate in 1992, and 59.4% for the Railroad Commissioner candidate in 1992. The remaining primary for Court of Criminal Appeals in 1990 went to a runoff in which the minority candidate received 49.9% of the vote. Other elections in which minority candidates performed less well are excluded from the analysis, including at least one statewide election (1990 Democratic Primary for Treasurer).

51. Second, Dr. Weber fails to compare the minority districts to the Anglo districts in the plan. Given the goal of incumbency protection, the plan creates districts that would, in general elections, predictably support the nominees of either the Democratic or Republican nominee, irrespective of race.

52. Third, Dr. Weber's analysis is retrospective, based on considerable information not available to the legislature during the redistricting process. It thus fails to take into account the approximate nature of foreseeing likely results in future districts. As the above analysis indicated, Dr. Weber's efforts to create less "safe" minority districts actually results in shaving too finely the minority populations of three districts (20, 28, and 29), thereby diminishing minority opportunities.

53. Fourth, Dr. Weber fails to show any consequential results of creating allegedly overly "safe" districts in the state's plan. His plan, despite the ostensible effort to create less "safe" districts, fails to create additional minority opportunities. To the contrary, outside of the 9 majority-minority districts, plaintiffs' alternative plan does not create a single district with a greater than 22 percent voting-age black or Hispanic percentage. Under the state's plan, however, District 25 has a 25 percent

black voting age population and a combined minority population of 39 percent. Dr. Weber has not created a more racially competitive plan, he has rather created greater racial competitiveness solely among the nine majority-minority districts, reducing three of them to the point at which they are no longer more likely than not to elect a minority candidate of choice. There is no expanded racial competitiveness among the 21 Anglo-majority districts. To the contrary, these are all safe Anglo districts. None of these 21 districts has a combined black/Hispanic voting age population greater than 34.5 percent.

MINORITY OPPORTUNITIES: VOTER PARTICIPATION

54. Dr. Weber analysis of voter participation does not fully reveal the substantially greater Anglo participation in general elections compared to either blacks or Hispanics in Texas. The greater Anglo participation can be demonstrated through Dr. Weber's own data. The appropriate focus is on his ecological regression analysis of sign-in data, which includes all voters who show up to vote on election day.

55. The sign-in data is not subject to problems arising from possible lack of purging of registration data and incorporates all voters. It is thus not subject to the fluctuations that result from the particular circumstances of individual elections. In 1992, for example, in District 20 only Hispanic candidate Henry Gonzalez was competing for Congress and in District 28 only Hispanic candidate Frank Tejeda and a marginal Libertarian candidate were competing. In both these elections, there was much greater Anglo than Hispanic falloff between the voters signing-in and the voters casting a congressional ballot.

56. Table 7 compares Anglo versus black participation for the 1992 general elections. The analysis focuses on the state as a whole and on Dallas and Harris Counties. For blacks, Table 7 shows that throughout the state, where Dr. Weber was able to estimate participation, Anglo participation exceeded black participation by a wide margin. Anglo participation is also substantially higher than black participation in both Dallas and Harris counties. For Hispanics, summary measure is not necessary, given that in all districts where Dr. Weber was able to estimate Anglo and Hispanic participation, Anglo turnout is much higher than Hispanic turnout, often more than double Hispanic turnout. Citizenship differences cannot account for these participation differences, given that the falloff between the Hispanic voting-age and citizenship percentage is small outside of Districts 29 and 30 (see demographic data in Appendix 1).

TABLE 7
ESTIMATES OF ANGLO AND BLACK PARTICIPATION
1992 GENERAL ELECTION
DERIVED FRON PRELIMINARY REPORT OF
RONALD E. WEBER

I. ANGLO V. BLACK TURNOUT	% ANGLO VOTING-AGE POPULATION TURNING OUT TO VOTE	% BLACK VOTING-AGE POPULATION TURNING OUT TO VOTE
ALL DISTRICTS *	67%	37%
DALLAS COUNTY DISTRICTS	72%	38%
HARRIS COUNTY DISTRICTS	62%	44%

* BLACK TURNOUT WAS NOT MEASURED FOR SOME DISTRICTS IN DR. WEBER'S REPORT. BUT THE BULK OF THE BLACK POPULATION IS INCLUDED.

TABLE 8
ESTIMATES OF ANGLO AND BLACK PARTICIPATION
1988-90 GENERAL ELECTION
DERIVED FROM PRELIMINARY REPORT OF
RONALD E. WEBER

I. ANGLO V. BLACK TURNOUT	% ANGLO VOTING-AGE POPULATION TURNING OUT TO VOTE		% BLACK VOTING-AGE POPULATION TURNING OUT TO VOTE	
	1988	1990	1988	1990
ALL DISTRICTS *	51%	44%	40%	28%
DALLAS COUNTY DISTRICTS	56%	46%	46%	27%
HARRIS COUNTY DISTRICTS	40%	38%	41%	26%

* BLACK TURNOUT WAS NOT MEASURED FOR SOME DISTRICTS IN DR. WEBER'S REPORT. BUT THE BULK OF THE BLACK POPULATION IS INCLUDED.

57. Table 8 compares Anglo versus black participation for the 1988 and 1990 general elections. For blacks, Table 8 shows that, in both 1988 and 1990, statewide white participation exceeded black participation by substantial margins. Anglo participation is also higher than black participation in both Dallas and Harris counties in 1990 and in Dallas County in 1988. As in 1992, Dr. Weber's original tables show that Anglo participation far exceeds Hispanic turnout throughout the districts of the state, for both 1988 and 1990.

CONCLUSIONS

58. Independent of race, the state's plan and the plaintiffs' alternative plan represent fundamentally different redistricting choices. Similarly different choices are reflected in the two additional plans presented by plaintiffs' expert. The state chose to adopt a plan with the effect of protecting all congressional incumbents in the state, both Democratic and Republican. The alternative plan, as well the Johnson and Pate plan, jeopardizes the reelection of numerous incumbents, primarily Democrats. Incumbents would be placed in jeopardy regardless of whether the plan had been adopted for the 1992 elections or if it is now adopted for the 1994 elections. These fundamental political differences explain why, given its redistricting goals, the state legislature would not have embraced a plan even roughly modelled on plaintiffs' alternative proposal.

59. Given racially polarized voting in Texas, plaintiffs' alternative plan also sufficiently weakens minority opportunities to the point that it would pose a risk of rejection under the retrogression test of Section 5 and expose the state to Section 2 litigation as well. Such a plan would clearly not be acceptable to a state legislature concerned with minimizing the risks of violating the Voting Rights Act. Under plaintiffs' plan, only 4 districts

provide Hispanic voters reasonable opportunities to elect candidates of their choice, fewer than the 5 such districts that existed under the previous 1981 plan. Overall, under plaintiffs' alternative plan, 21 districts are relatively safe for the candidates of choice of white voters and three additional districts -- 18, 20, and 28 -- are more likely than not to elect candidates of choice of white voters. This mean that reasonable opportunities for blacks and Hispanics, who constitute 37 percent of the state's population and 33 percent of it's voting age population, are confined to but 6 districts in the alternative plan: 20 percent of the state's 30 districts. The Johnson plan provides for more substantial minority opportunities, significantly weakening only District 29 in Houston. The Pate equivalent plan, however, would not only weaken District 29, but also likely result in the loss of the Hispanic incumbent representative in District 15 as well.

State's Exhibit 15

Vera v. Richards
Testimony of Paul Colbert

Introduction: The purposes of this testimony are:

1) to provide detailed understanding of the factors that influenced the decision-making process in shaping the Harris County area Congressional districts during the 1991 Regular and Special Legislative Sessions, and

2) to analyze the relative impacts and merits of the districts adopted by the Legislature to those proposed by the plaintiffs in *Vera v. Richards*.

The format of this testimony will be as follows:

SECTION 1 - Explanation of my background and qualifications,

SECTION 2 - Detailing of the factors influencing the decisionmaking process,

SECTION 3 - Analysis of the current districts and the specific reasons behind their creation and conformation,

SECTION 4 - Analysis of the districts proposed by the plaintiffs, and

SECTION 5 - Summary.

For purposes of this report, all district numbers will refer to the districts adopted by the Texas Legislature and currently in use for this election campaign, unless otherwise indicated. "CD" will refer to a specific Congressional district in the respective plan, as specified by the number (e.g. - CD 18 refers to the 18th Congressional District seat currently held by Cong. Craig Washington.) Similarly, "SD" will refer to a Texas State Senate district and ;'HD" will refer to a Texas State House of Representatives district. The terms "Anglo",

"Hispanic", "Black" and "African American" are applied as in common usage.

SECTION 1

Background: My name is Paul Colbert. I am a former member of the Texas House of Representatives, representing the southwest portion of Houston from January of 1981 to January of 1993. During and subsequent to that time I have worked professionally as a political consultant, analyst and campaign manager in numerous campaigns throughout Harris County. I have also been employed by the Democratic Party to analyze voting trends, construct campaign plans, and to target and organize efforts to register new voters.

As a member of the Texas House, I was actively involved in the redistricting efforts in both 1981 and 1991, although I did not serve on the Redistricting Committee in either Session. In consultation with the other members of the Harris County delegation, I drew the State House districts for Harris County adopted by the Legislative Redistricting Board in 1981 and drew much of the Harris County State House plan adopted in 1991. I was also one of many people involved in drawing the Congressional district boundaries in 1991. I have been described in a publication of the Associated Republicans of Texas as "the key mapmaker for the Democrats". What that publication failed to note is that I don't believe or engage in rank partisan gerrymandering. The 1981 Harris County State House plan that I drew not only preserved all of the Republican seats in Harris County, it also created two new Republican seats in deference to the growth in Republican population in west Harris County. One House seat that I drew for a Democratic incumbent was subsequently won by a Republican, and one Republican-held seat was subsequently won by a Democrat. When demographics required the elimination

of the seats of two incumbent State House members in Harris County in 1991, the plan that I drew balanced the loss to one Democrat and one Republican. Furthermore, that plan was sufficiently fair that one previously Democratic seat was won by a Republican in the next election and another is likely to be in this election.

Prior to my election to the Legislature, I served as the research director of the Senate Education Committee and as a researcher and aide to numerous legislators. My particular expertise included the areas of public school finance and state budget finance in general. I am known for my work on complex issues and, especially, anything involving numbers. In my professional capacity, I have also served as a consultant to the State of Oklahoma on public school finance and assisted them in the creation of their current system. I have often described redistricting as the one issue that makes me look forward to school finance.

I served pro bono as an advisor to the State of Texas on the statistical and political makeup of the various districts and the decision-making process behind their creation in the legal challenges to the redistricting plans in both 1981 and 1991. I am currently retained by the Texas Attorney General's office for the same purposes. A brief version of my resume is State's Exhibit 19.

SECTION 2

There are many general reasons behind the creation and conformation of the Harris County area Congressional districts. The following is by no means a complete listing, but I believe it covers the major factors. Following each general principle are a few specific examples of how this rule affected different districts. Obviously, for the construction of a given district, these factors are of varying importance. The repeated references to party and ethnicity are not out of my preoccupation with them, but

merely to indicate the degree to which such factors frequently were secondary or not even considered. For the record, I am an Anglo Democrat who represented a district that was approximately 35% African American, 15% Hispanic, 3% Asian, and 47% Anglo. I am also a former Young Republican leader.

In no particular order, the factors are:

1) Protection of incumbents. The Prime Directive. This was the #1 rule of House Redistricting Committee Chair Tom Uher. Pairing or seriously undermining incumbents was not tolerated unless there was no alternative. For this reason, there are districts in the Harris County State House plan that have shapes no less "bizarre" than the challenged Congressional districts for reasons clearly not involving race.

One example involves HD 136, represented by Ashley Smith, an Anglo Republican. Due to the relative proximity of Rep. Smith's residence to the residences of Rep. Debra Danburg (HD 137), an Anglo Democrat, and Rep. Dalton Smith (HD 135), another Anglo Republican, it was necessary to construct a thin "neck" through the Memorial Villages linking Ashley's home neighborhood of River Oaks with the bulk of his district. As the maps in Exhibit 16A indicate, this neck is extremely similar to a portion of the neck linking Cong. Craig Washington's home neighborhood in Third Ward with the Acres Homes and Fifth Ward/Northeast communities traditionally a part of CD 18. This latter neck generated significant reaction in the press from individuals who objected to the split that made a portion of their neighborhood be represented by Cong. Washington, an African American Democrat, but who made no mention of the almost identical split between the two Anglo Smiths. The point is that actions sometimes attributed to racial factors, as in the creation of the CD 18 neck, are in fact caused by considerations other than race.

Other State House districts that are as unattractive as the Congressional districts for reasons of incumbent protection include HD 133, represented by Robert Eckels, an Anglo Republican, and the adjacent HD 134 represented by Sue Schechter, an Anglo Democrat. Exhibit 16B shows the shapes that were utilized to avoid pairing them with each other or with Rep. Heflin and the two Reps. Smith in the neighboring districts. Probably the most extreme example in Harris County is in HD 129, the district pairing incumbent Anglo Republicans Mike Jackson and Randy Pennington. Due to the reduction in the number of seats apportioned to Harris County, a pairing was necessary, and various considerations combined with the locations of incumbent residences required that it occur in southeast Harris County. The alternatives were to pair Jackson and Pennington, or to pair Jackson with Anglo Republican Dan Shelley. Reps. Shelley and Jackson were universally well respected, whereas even a majority of the Republicans in the delegation had privately indicated preference for the elimination of Rep. Pennington's district. This necessitated the multiple-armed shape of District 129 evident in Exhibit 16C, both to avoid the Jackson/Shelley pairing and to make the resultant district more favorable to Rep. Jackson than to Rep. Pennington.

If such considerations cause districts as small as State House districts to meander about, the impact can only be larger in districts as large as Congressional districts. In the section analyzing the individual Harris County Congressional districts, several instances will be shown where this occurred.

It should be noted that many members consider deference to incumbents to be generally important as a matter of public policy, equating it to deference to the previously-expressed will of the voters. Even those who disagree with this line of reasoning tend to feel differently about Congressional districts. Given the importance of

seniority in Congress and therefore its relationship to efficacy on behalf of Texas and its residents, it is widely felt in the Legislature that it is particularly important for the good of Texas to protect Congressional incumbents.

2) Preferences of incumbents. This related category includes the preferences of both incumbent Congressman and incumbent State legislators who had policy, political or personal ambition reasons for the inclusion or exclusion of territory, populations or other forms of community in a particular district. Many examples of this principle will be given in the depictions of the various districts in Section 3, particularly involving the competing Congressional ambitions of Sen. Gene Green and Rep. Roman Martinez. However, one example involving Rep. Martinez and the downtown Houston area (VTDs 0016, 0024, 0032, and 0369) clearly exemplifies the profound impact this can have on the shape of districts.

Rep. Martinez wanted to move much of downtown from CD 18 to the new Congressional district he hoped to represent, for fundraising and other political reasons, and as a member of the House Redistricting Committee, he partially prevailed. Since the communities he proposed to link in the new district cross the communities that historically have constituted CD 18 like an "X", it was therefore necessary to create a new "neck" to link the traditional southern and northern portions of the 18th district. The alternative would have been to bring the new CD29 over the top in the northeast, as was done in the comparable newly created SD 6, and leave downtown as the neck in CD 18. This latter path would also have included more territory perceived as favorable to Sen. Green in the expected future contest. Exhibit 16D compares the resulting shape with the previous version of CD 18 and both the current and previous versions of SD 13, the majority African American State Senate district that represents most of the same communities. It is clear

from the maps that the resulting linkage is not a necessary result of racial considerations but is merely the collision of political considerations with incumbent protection. (Please refer again also to the discussion of Exhibit 16 in #1 of this Section for further discussion of the comparability of this neck to a clearly non-racial twin in the drawing of State House districts.) While perhaps undesirable from an esthetic viewpoint, most feel that such decisions should be within the prerogatives of legislative bodies.

For the same reasons, Rep. Martinez repeatedly expressed a desire that the major industries along the Houston Ship Channel be included in the new district, resulting in the long "nose" heading east to Baytown. By the same token, Baytown was split not just to provide a bridge to the north channel area for CD 25 (discussed at greater length in Section 3), but also to weaken the political impact in the new CD 29 of the Campos family, who were allied with former Rep. Al Luna, a potential primary opponent for Rep. Martinez. Absent these clearly non-racial considerations, the shapes would have been far more compact.

3) **Political impact of multiple representation**. Contrary to a view expressed by the plaintiffs, it is frequently a significant advantage to have a geographic community represented by several members of the Congressional delegation rather than one. For example, it was a conscious decision to include portions of the NASA/Clear Lake area in three different districts with likely representation from both parties in 1981, and particularly to include the Space Center in Cong. Jack Brooks' district, since he was chairman of the Government Operations Committee and Dean of the delegation. Subsequent elections gave us Mike Andrews, a Democrat and member of the Ways and Means Committee and Tom DeLay, a Republican and member of the Appropriations Committee. This arrangement was invaluable in the in-

fighting that has gone on since over the funding and operation of the space program and was purposely continued in the current plan. It is by far the major reason for the boundaries in the southeastern corner of Harris County.

Similarly, it would have been far more compact to transfer the Bellaire, West University and adjacent City of Houston portions of CD 22 to CDs 7, 18 and/or 25. However, removing Cong. DeLay from representation of this area would have been politically foolish. Cong. DeLay had repeatedly expressed concern over the potential viability of a Republican Primary opponent from the Harris County portion of his district. He had, therefore, been extremely aggressive in his work on behalf of Houston and Harris County. As a member of the Appropriations Committee, he had been instrumental in securing funding for the area, particularly transportation funding for Metro. It was further hoped that he could assist in future attempts for flood control funding for the Brays Bayou project, and compactness was therefore sacrificed to the expediency of political clout.

It should be noted that the plan proposed by the plaintiffs would entirely remove Cong. DeLay from Harris County and would leave the NASA/Clear Creek area with only one member of Congress. Were this plan to be adopted, the resulting negative impact on the entire Harris County area economy due to loss of political support for NASA and other federal projects would likely be huge, and is a clear example of putting partisan considerations ahead of the overall welfare of the community.

4) **Maximization of political representation**. It was the desire of many in the Harris County delegation to use the explosive growth of the Hispanic population over the last decade as a means of attaining for Harris County an additional Congressional representative. Although Harris County's population had grown overall by about 400,000, the rate of growth had been less than that of the

state as a whole. In fact, with the ideal size of a Congressional district about 40,000 people larger than in 1981, our net growth was the equivalent of only about 1/3 of a district. The "Texas Silicon Valley" corridor from Williamson County to San Antonio had experienced more growth and was favored to gain the last seat (with the Dallas-Fort Worth and South Texas areas having a lock on the other two new positions.) Thus, creating a Hispanic majority district was supported by some not for reasons of ethnicity but for the political impetus it created behind securing an additional seat for the county, and considerations of race in both the make-up and shape of the district were at best secondary.

5) The Voting Rights Act, racially polarized voting and considerations of ethnic equity. There was not a single member of the Texas Legislature who was totally unaware of the existence and history of racially polarized voting in the Houston/Harris County area, in Dallas and in South Texas. They may not all have fully understood its pervasiveness, but everyone knew that no Hispanic had ever been elected to Congress in Texas from a district with less than a Hispanic majority. Everyone knew that the only two African Americans elected to Congress this century came from the majority minority 18th District. Most were aware or became aware during the course of testimony and debate that the previous Black/Hispanic coalition politics that had made this possible absent a Black majority were beginning to break down as a result of bitter contests over at-large city council positions.

All were aware that few African Americans and Hispanics had been elected to county-wide judicial positions in the urban counties due to a lack of support from Anglo voters, and even with the few successes, that the overall numbers of minority members of Congress and the judiciary constituted a severe underrepresentation of the overall minority population of the state and within the

respective communities. In Harris County, minorities were defeated county wide regardless of their partisan affiliation, losing frequently when contested in their respective party primaries and even more often in general elections, where minority candidates generally ran 2-3% behind their Anglo colleagues. (A good example is now-Federal Judge Ken Hoyt, an African American appointed to a state district bench by Gov. Clements, only to lose his bid for re-election in the Republican primary in 1982. In 1984, he filed for a position unopposed in the primary and was then elected in the complete Republican sweep after refusing to allow his picture to be displayed in the Republican campaign literature.)

We were all aware that it had been uniformly futile for minority candidates to run for Congress in majority Anglo districts due to this raciallypolarized voting, and that, given that history and the growing divisions between minorities, the only way it would be possible for the African American and Hispanic communities to elect their candidates of choice was through the creation of districts with a majority of the specific protected minority. Racial voting patterns are an unfortunate fact of life in Texas politics and are well known to everyone involved. We in the Legislature were aware of all of this by virtue of our political experiences and knowledge in Texas, our knowledge of the Voting Rights Act (see pp. 16, 18 & 19 of the Associated Republicans of Texas publication, Exhibit 16H) and its various publicized violations across the state, and because many witnesses brought these facts to our attention in redistricting hearings conducted across the state.

Contrary to the characterization of these districts by the plaintiffs as examples of "apartheid" (see Exhibit 16H) the informal guidelines utilized by many of us during the redistricting process encourage interracial cooperation rather than separation to be successful in the political process. To the extent that ethnicity was a factor,

and it should be emphasized that it was only one of many factors in every instance, the guidelines can simply be stated as "no fragmenting" and "no packing."

The combined impacts of these "no fragmentation/no packing" guidelines is to create districts where coalition politics and cooperation between ethnic communities are essential for political success while, at the same time, respecting the need to create opportunities for the effective political impact of those minorities against whom historic discrimination has resulted in lack of political empowerment and whose protection the Voting Rights Act was therefore intended to guarantee.

There were several attempts at drawing districts in the name of the Voting Rights Act and political advancement of protected minorities that were rejected by the Legislature. The best example was a proposed amendment that Rep. Ron Wilson, an African American Democrat from Houston, had on the floor during the 2nd Reading debate and that he maintained would create one additional majority - minority district. Exhibit B compares the shape and scale of this district (CD 25, Plan C532) with CD 29 (shaded) and the other Harris County districts adopted under the current plan. The proposed district would have extended over 100 miles from Ft. Bend and Brazoria Counties, through Houston and Galveston eastward to Beaumont, Port Arthur and the Louisiana border. Much of the seemingly wide middle reach consists of virtually unpopulated Bolivar Peninsula and the waters of Galveston Bay.

Rep. Wilson withdrew the amendment at the behest of the Speaker due to its extreme shape and failure to garner support. Several similarly extensive districts were prepared by an aide to Rep. Jerald Larry, an African American Democrat from Dallas, but he considered them too extreme to offer. An attempt by Rep. Wilson to offer a comparably extreme district in the State House plan was voted down.

6) Failure of the Governor/Secretary of State to submit precinct information to the Census Bureau. As silly as this may seem, this factor is responsible at least in part for several of the "tendrils" objected to by the plaintiffs. Gov. Clements was governer of Texas in both the late 1970's and late 1980's, and in both instances he and his appointed Secretary of State made Texas one of the few states that did not submit precinct boundary information to the Census Bureau. As a result, census blocks, block groups and tracts do not necessarily correspond to precinct boundary lines, and on occasion can snake merrily along for great distances. In the latest redistricting effort, the staff of the Texas Legislative Council created accumulations of census blocks called "VTDs" to approximate as closely as possible the existing precinct boundaries. However, some of these were non-correspondent and oddly shaped due to the boundaries of a given census block. Furthermore, a person selecting one of these blocks on the small computer screen would sometimes unintentionally grab a meandering tendril that was not readily apparent, into a district, and the shape wouldn't become apparent until a later printing of a map. Given the impact of time (#7 below), the mistake would stay.

7) Time and computer speed. I have read and heard the arguments advanced by, or on behalf of the plaintiffs, that the shapes of the Congressional districts are the primary cause behind the doubling of the number of voting precincts in Harris County. They argue further that this somehow unconstitutionally disenfranchises voters, necessitating the implementation by the Court of their proposed redistricting plan.

There has been no bigger critic of the proliferation of precincts than I, but it is not solely or even primarily the result of the shapes of the Congressional districts. It is more a function of technology outstripping the time and ability of the legislators involved in the redistricting

process. The availability and sophistication of computers to aid in the redistricting process in 1991 made the splitting of census tracts possible for the first time on a massive scale, and like kids with a new toy, since it could be done, it was. However, the extremely short time between the final receipt of data and the end of the Regular Session, as well as the traditional "hands-off' attitude of the House and Senate concerning their respective redistricting plans, led to little or no conforming of boundaries between state House and Senate districts. Similarly, the 30-day limit on the length of Special Sessions left little time to resolve all the other considerations and conform the Congressional boundaries to the already unmatched state House and Senate lines. These problems were exacerbated by the vast volume of data needed to draw districts in Harris County. The "REDAPPL" redistricting system ran slowly enough under any circumstances; when it was being accessed by multiple users in the closing days and hours of the Session, it crawled.

With some effort, it would be possible to eliminate at least 400-500 of the precincts in Harris County by making extremely minor modifications to conform boundaries of the various levels of districts in a manner that would have virtually no political, ethnic or geographic impact on the current districts, and a simple directive to the next Session of the Legislature to do so would be far less intrusive on the prerogatives constitutionally assigned to the Legislature than the massive overhaul proposed by the plaintiffs, whose own plan would not in fact result in anywhere near as large a reduction in precincts.

8) Lack of available information on school district, civic club and other similar boundaries. Failure to conform the Congressional district boundaries to the borders of other entities was sometimes intentional (see #3, this Section), and sometimes the result of lack of

time (in the case of city boundaries, which were on the system) which both slowed up the operating system to utilize and would have required significant extra time to conform, since they frequently straddled VTD lines. Most other boundary information was simply not available to the Legislative Council to input. In all likelihood, it would not have been used in any case, since such factors are frequently given little import within the confines of an urban area.

SECTION 3

CD 25: CD 25 was formed in 1981, with a balance between the eastern and western regions of the district for political reasons more fully described later on in the CD 25 portion of this Section. It stretched from the eastern portion of Fondren Southwest on the west, through the middle- and upper-middle-class, primarily Anglo neighborhoods in Westbury, Meyerland and on through the inner Loop 610 neighborhoods to the affluent Rice University/Medical Center area. Continuing along the southern portion of Harris County through the middle- and upper-middle-class Black neighborhoods in Hiram Clarke and the poorer Black neighborhoods in Sunnyside, South Acres and South Park, old CD 25 crossed Gulf Freeway (I 45) into the blue collar, mostly Anglo but increasingly Hispanic South Ship Channel communities of Pasadena, Deer Park and on to the eastern edge of the county in La Porte. It also included the northern reaches of the NASA/Clear Creek area in southeast Harris County.

Due to the population shortage in CD18, significant portions of the African American neighborhoods in Sunnyside and South Park were needed to avoid retrogression in CD 18. Furthermore, much of the growing Hispanic population in the South Ship Channel area was removed and incorporated into new CD 29.

As a result, three new areas were incorporated into CD 25 in 1991: the significantly African American northeastern quarter of adjacent Ft. Bend County, the vast groupings of apartment complexes, containing significant concentrations of young Blacks and Hispanics straddling Southwest Freeway from Fondren Southwest west to Alief, and the predominantly blue collar communities of North Shore, Channelview and portions of Baytown and the adjacent neighborhoods north of I 10 and the Ship Channel.

The Ft. Bend area in CD 25 is an extension of Hiram Clarke economically and sociologically. The civic clubs share a joint umbrella organization. Many Ft. Bend residents attend one of the three major churches in Hiram Clarke. Much of this section of Ft. Bend had been included in SD 13 in 1981 for precisely that reason, and the failure to do so at that time in CD 25 was primarily the result of the political balance east and west of Interstate 45 that was imposed by the competing ambitions of Mike Andrews, who had narrowly lost a race for CD 22 in much of that territory in 1980 and whose base was west of I 45, and Sen. Chet Brooks of Pasadena, whose base was east of the freeway.

Similarity, the new territory added to CD 25 in southwest Harris County, from Fondren Southwest out to Alief, is an extension of Hiram Clarke and Sunnyside. Many of the African American residents of the new area are the children of residents of the latter, moving out on their own into the apartments and other lower-cost housing that predominates in that area.

I drew most of the lines in this area. The major determinant as to which territory to add in the area west of Southwest Freeway was not so much ethnicity as multi-family housing. An examination of the block-level maps will show that almost every area of single-family housing was left in CD 22, while the large patches with significant population, indicating apartment complexes, were cut into

CD 25. This was a conscious action on my part and was similarly done in both the State House and State Senate plans, and it was done for several reasons.

Many of the residents of this area have children that in educational jargon are referred to as "educationally disadvantaged". Many of these kids are in single-parent households and/or the parent doesn't have the educational attainment to prepare them to compete successfully in school, creating an intense need for a substantial compensatory education program. Those who are of college age are significantly in need of financial assistance programs such as Pell Grants.

For the last decade they have been represented in the Legislature and in Congress by people who are politically and philosophically opposed to such programs and the funding for them. Furthermore, they have resided in districts where they would have little or no impact on the outcome of the election, so their needs and viewpoints carried no political weight. Since apartment residents are highly transient, they are significantly less likely to have registered to vote or even know where and how to do so, further reducing their ability to impact the policy decision-making process. Since these residents are perceived by the incumbents, who are Republicans, to be likely Democrats, those in office are unlikely to try to alter this situation. In fact, during the last decade, no effort was made by the incumbents to assist these people in registration, and as a result, the area contained the largest concentration of unregistered people of voting age in all of Harris County and perhaps the State.

It was my hope that inclusion of the multi-family residents in CD 25 and the corresponding State legislative districts would both result in active registration programs to assist and improve the involvement of these citizens, and that the resulting involvement would impact the decisions of their federal and state legislators in the area of education. In fact, both have since occurred.

As mentioned elsewhere, the boundaries in the area south of the Ship Channel represented the competing desires of the Cong. Andrews and Rep. Martinez, who both wanted significant portions of Pasadena. Andrews' desire for Pasadena also resulted in dividing a portion of Westbury (Pcts. 315, 14, 291 & 293), since politically he couldn't hold both areas without weakening his district to a Republican challenger.

Any way you draw an area containing 560,000 people, you are going to have diversity in population and in communities represented. However, some attempt was made to retain a sense of socio-economic community or balance when possible. For example, to make up for the territory lost to CD 29 in Pasadena and Deer Park, it was felt that the largely blue collar and middle class North Shore and Channelview areas north of the Ship Channel were far more homogenous with the remaining portion of the eastern part of the district than either the affluent white collar areas of far southeast or of southwest Harris County. Since the structure of this district had originally been designed to balance these two areas and their respective socio-economic characteristics, the "Baytown bridge" was utilized to unite the two areas. It should be noted that both the county commissioner's precinct and the San Jacinto Community College District recognize the linked community of interest that the two sides of the channel share. As mentioned elsewhere, some of the splitting of precincts in this area also resulted from concerns over the potential political support for rival politicians in the Democratic primary.

Just as the communities on both sides of the Ship Channel share economic and political interests and viewpoints, I can assure you after 12 years of representing them that the middle- to slightly upper-middle-class Anglo and African American communities of southwest Houston express far more in the way of common

economic and political attitudes than they do with both their more and less affluent neighbors.

Overall, redistricting left the ethnic balance of CD 25 relatively unchanged. The political balance in the district has shifted somewhat more to the Republican side, but the district still leans Democratic by about a 55/45% margin. It is, however, quite possible for a Republican candidate to prevail, depending on distribution of turnout and relative strength of the candidates, particularly among the approximately 25-30% of voters who split their tickets.

CD 18: This is the traditionally African American district first held by Cong. Barbara Jordan and subsequently by the late Cong. Mickey Leland. Following Cong. Leland's tragic death in 1989, the seat was won by State Sen. Craig Washington, who was the incumbent congressman at the time of redistricting.

When redrawn in 1981, old CD 18 had a Black population in the low 40% range and a Hispanic population in the low 30's. This arrangement produced a stable African American-dominated district due in part due to the strong coalition politics inherent in the two communities at that time and characterized by the appeal and work of Cong. Leland. Also, the relatively low citizenship, registration and participation of the Hispanic population probably gave the Black community an outright majority of the voting public. By the end of the decade, the population percentages had almost fully reversed due to the depopulation of the inner city and the growth in the Hispanic community. With the previously mentioned political differences over city council seats and the loss of the unifying force of Cong. Leland's personality, the district was developing into a potential inter-ethnic battleground, both figuratively and literally.

The major African American communities consisted of Cong. Washington's base in 3rd Ward, former

Cong. Leland's home territory in 5th Ward, and 4th Ward, Acres Homes, Studewood and the Northeast/North Forest areas to the north, with the northern edge of Sunnyside and South Park to the south. The Hispanic communities stretched from East End and Denver Harbor to the south and east, northward through the N. Main area up to Aldine, together with the growing Hispanic populations in the formerly all Anglo Heights and Montrose.

The Anglo population was also influential, particularly the politically organized gay and lesbian communities in the Montrose and the extremely affluent business and professional people residing in the Boulevard Oaks/Museum neighborhood to which Cong. Leland moved before his death.

A policy of "following the children of the community" was followed in the redrawing of CD 18 similar to that used in CD 25. Particularly on the north side, beyond Acres Homes and around Greenspoint and Intercontinental Airport, the outward migration of young adults into multi-family and some single family developments in previously Republican areas had occurred there on a large scale. In fact, Precinct 342 in that area contained the single largest number of unregistered African Americans of voting age of any precinct in Harris County. Additional population was added on the north side consisting of those Anglo and minority portions of Sen. Green's home area, formerly in CD 8, that were left out of CD 29 due to the efforts of Rep. Martinez.

The depopulation of the inner city also necessitated the transfer of large portions of CD 25 in the Sunnyside/South Park areas to CD 18, resulting in the narrow neck connecting the eastern and western halves of CD 25. The particular bumps and twists in that area resulted partly from the desire of Rep. Ron Wilson to have his home area included in CD 25 and of Cong. Andrews to

retain the politically potent precincts 240, 158 and 294 in his district.

The Memorial/Spring Branch neck and its genesis have been described in detail elsewhere in this report. As mentioned, this is almost purely the result of political ambition and is not racially derived. The other major addition to CD 18 is the extension leading out Southwest Freeway to the apartments in the Gulfton area. The reasons for this mirror those for the additions of the other apartment groupings, and the pattern is virtually the same in the State House (HD137) and State Senate (SD 6) plans.

CD 29. Virtually all of the salient features of CD 29 and its genesis have already been covered elsewhere in this report. Suffice it to say that, although created to empower a Hispanic majority, its shape and makeup are only partly determined by that motivation. There are sufficient concentrations of Hispanics outside the boundaries in Sen. (now Cong.) Green's base neighborhood, in Pasadena and in the Gulfton areas, and sufficient concentrations of Anglos included inside the district in relatively non-compact ways that the oddities of shape were clearly avoidable if one attempts to explain the district by race. Exhibit 16E shows the location of numerous blocks with greater than 25% Hispanic population near Rep. Green's home area that could have been included in CD 29 in place of some of the southern tendrils" and Anglos. Conversely, leaving this area out entirely would have permitted other portions of CD 29 to be shaped more smoothly. If either Sen. Green or Rep. Martinez had not injected their political and personal considerations, the results could have been significantly more uniform.

CD 7, 8, 9 and 22. The prime features of these districts were also previously covered, with preservation of incumbents, multiple political representation and political

effectiveness being the major considerations. With the exception of CD 8, none of them changed significantly from their former configurations.

In the case of CD 8, a previously contestable Republican-held seat was turned into a safe seat for Anglo Republican Cong. Jack Fields. The Woodlands area in Montgomery County was added into his district in many of the plans offered by Republicans, and is geographically, socially and economically close to his home base in the Kingwood/Humble area. He is also politically quite compatible with the Aggies at Texas A&M who were added to CD 8, even if he did attend Baylor.

SECTION 4

In my professional opinion as a political consultant and as a former Legislator, the alternative plan presented by the plaintiffs represents a severe violation of the Voting Rights Act and of the principles of equity that the Texas Legislature has consistently tried to follow, by both packing and fragmenting minority communities. The overall structure would create two majority minority districts in Harris County, but neither would have a dominant minority. (See Exhibit ___ for a population and electoral breakdown of the districts.) The proposed CD 29 would probably not have a voting majority of minorities even if the communities could overcome their differences and back a single candidate. It would most likely represent a safe Democratic seat for an Anglo like Cong. Green. or Sen. John Whitmire.

CD 18 would be returned under this proposal to a Configuration similar to its 1981 makeup, and would most likely elect a candidate favored by the African American community at the outset. Given the demographic shifts that have been occurring, it is likely that this district, too, would reverse, setting the stage for later conflict.

The treatment of the remainder of the African American community is inexplicable in this day and age. The proposed plan buries the entire southern portion of that community in a newly configured CD 25 in which they would be totally dominated by a River Oaks/Tanglewood/West University axis in the general election, and for that matter in the Republican primary if they chose to realign. As such, it parallels the worst racial gerrymandering abuses that created the impetus for the Voting Rights Act. Removing Acres Homes from its traditional place in CD 18 and making it a small minority within the proposed CD 29 is equally hard to explain or justify.

SECTION 5

Summary: Although not ideal, the Harris County Congressional district boundaries adopted by the Texas Legislature constitute a good-faith effort to respect the interests of county residents and the laws of the United States, including the Voting Rights Act. Although the districts are not composed of the most simple and compact shapes possible, they do so for reasons of valid public purpose and prerogatives that prior court decisions have left to the realm of the Legislative Branch. The shapes are not explainable solely on account of race, but in fact have a myriad of contributing explanations. In no instance do any of the districts come close to the format of those rejected by the Supreme Court in *Shaw v. Reno*, and attempts to create such egregious districts were rejected.

By contrast, the plan proposed by the Plaintiffs virtually embodies the principles of fragmentation and packing that Congress attempted to outlaw through the Voting Rights Act. Given the severe political hostilities that have frequently broken out of late between the African American and Hispanic communities, most recently over the appointment of the HISD superintendent,

it is irresponsible and possibly down-right dangerous to the peace and well-being of the overall community to propose a Congressional district plan that not only denies either community an effective voting majority in a district but pits them against each other in a struggle for representation in two districts.

State's Exhibit 18

DEMOGRAPHIC COMPARISONS

CONGRESSIONAL DISTRICTS 18, 29 & 30

1	INTRODUCTION
2	CONGRESSIONAL DISTRICT 30
3	CONGRESSIONAL DISTRICTS 18 AND 29
4	SUMMARY COMMENTS
5	APPENDICES

THE UNIVERSITY OF TEXAS AT ARLINGTON
SCHOOL OF URBAN AND PUBLIC AFFAIRS

June 24, 1994

This is a demographic profile of three congressional districts of the State of Texas, Congressional Districts 18, 29 and 30. Districts 18 and 29 are in Harris County (Houston); District 30 is in the Dallas metropolitan area.

The data describing each district, in comparison with regional data, are presented in sections 2 and 3. Section 4 is an analysis and summation of the districts' data vis a vis the county/metropolitan data.

Section 5, Appendices consists of demographic and descriptive commentary from other published reports, particularly Chambers of Commerce. The xeroxed pages previously provided are inserted (in plastic protectors) immediately before the publication from the particular pages were copied.

Paul N. Geisel, PhD
Professor of Urban Affairs & Sociology

30TH CONGRESSIONAL DISTRICT

District 30, while appearing to roam over a great distance, is actually formed in such a way that all persons in the district are with a 25-mile radius. Also, the greatest proportion of the district is in the southern part of the City of Dallas encompassing the areas of South Dallas and Oak Cliff. Other communities include: Union Bower, in Irving; DalWorth, in Grand Prairie; Hamilton Park, in North Dallas; Richardson. Many of those, who are in the far North Dallas, represent professional, i.e., doctors, lawyers, dentists, school administrators, etc., whose primary activities take place in the southern part of the district.

As congressional districts go, District 30 has a very small geographic area. It is a part of one highly populated metropolitan area. As such the city of Dallas and the Dallas Statistical area have a number of representatives who share the same concerns and regional issues.

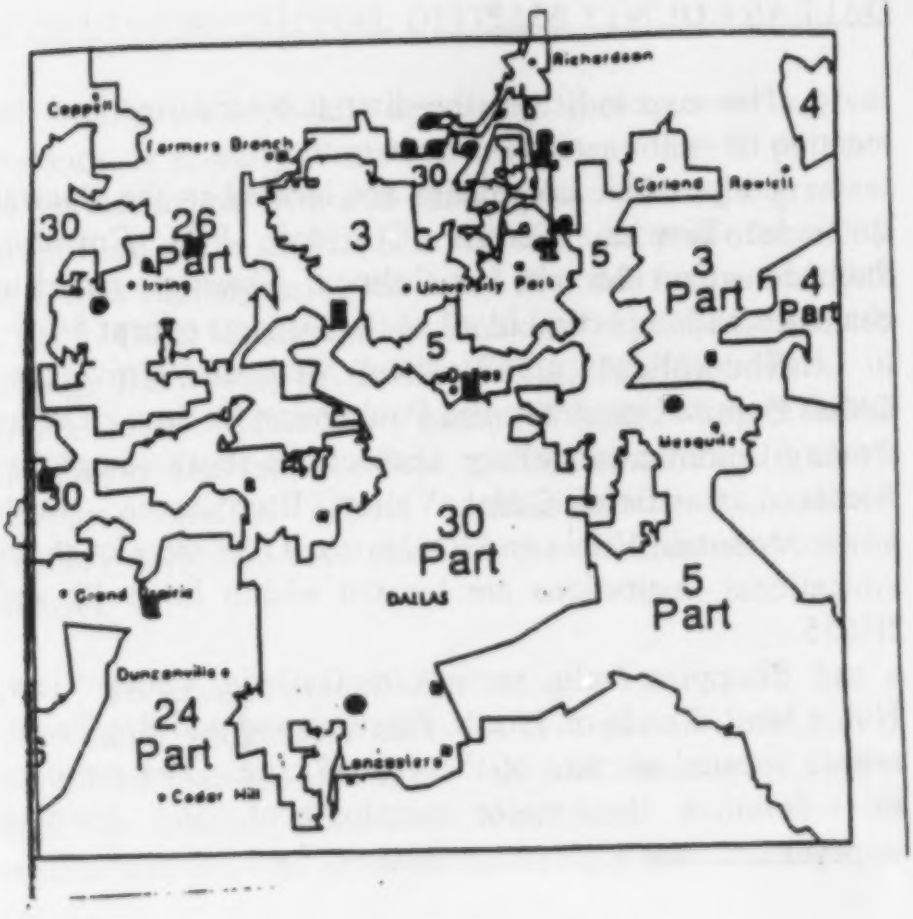
DALLAS COUNTY MAP

The map indicates the district boundaries and the location of major activity centers in the area.

Large office complexes are located in the Central Business District, Central Corridor, LBJ Corridor, StemMons Corridor and Las Colinas. These are radial in character with a portion in all of the districts except #4.

The colleges are Southern Methodist University, Dallas Baptist University and Paul Quinn College. Dallas County Community College District has seven campuses: Richland; Eastfield; Cedar Valley; Brookhaven; North Lake; Mountain View; and El Centro. Only three of these educational institutions are located within Loop 12 and IH635.

Shopping malls, such as the Galleria, Valley View, Irving Mall, Red Bird, North, Prestonwood and Big Town, are all located outside of the central core. The point of this is that the major employment and training opportunities are highly dispersed.


Richardson
Coppell
Farmers Branch
Carrollton
Rowlett
30
26
Part
3
30
5
3
Part
4
Part
Irving
University Park
5
Mesquite
30
30
Part
DALLAS
5
Part
Grand Prairie
Duncanville
24
Part
Lancaster
Cedar Hill

MEDIA

The following is a brief list of media - press, radio, TV - in this single market area:

This is obviously one media market with all forms - press, radio and TV - equally available throughout one Dallas/Fort Worth Metroplex.

NEWSPAPERS

Daily Newspapers

The Dallas Morning News
Communications Center
508 Young St.
Dallas, TX 75202
214/977-8222

Fort Worth Star-Telegram
400 West 7th St.
Fort Worth, TX 76102
817/390-7400

Fort Worth Star-Telegram
Dallas Bureau
2730 N. Stemmons Frwy.,
Suite 211
Dallas, TX 75207
214/637-6614

The New York Times
400 S. Record St., Suite 820
Dallas, TX 75202
214/760-7813

USA Today
708 Main St., Suite 1003
Houston, TX 77002
713/223-5688

Wall Street Journal
1233 Regal Row
Dallas, TX 75247
214/631-7250

The Wall Street Journal - Texas Journal
9111 King Arthur Drive
Dallas, TX 75247
214/631-7250

Chinese Daily News
400 N. Greenville Ave., Suite 17
Richardson, TX 75081
214/680-9151

Weekly Newspapers

Black Economic Times
1402 Corinth
Dallas, TX 75215
214/421-7063

Dallas Business Journal
4131 N. Central Expwy., Suite 310
Dallas, TX 75204
214/520-1010

Dallas Chinese Times
811 Central Expwy., Suite 417
Richardson, TX 75081
214/907-1919

Dallas Chinese News
200 S. InterUrban Street
Richardson, TX 75081
214/680-9578

Dallas Examiner (Black Community)
424 Centre
Dallas, TX 75208
214/948-9175

The Dallas Post Tribune (Black Community)
2726 S. Beckley Avenue
Dallas, Texas 75224
214/946-7678

Dallas Observer
3211 Irving Blvd., Suite 110
Irving, TX 75247
214/637-2072

Dallas Weekly (Black Community)
3101 Martin Luther King Blvd.
Dallas, TX 75215
214/428-8958

El Extra (Spanish Community)
2405 S. Buckner Blvd.
Dallas, TX 75227
214/388-0506

El Hispano News (Spanish Community)
10911 Dennis Road, Suite 502
Dallas, TX 75229
214/357-2186

El Sol de Texas (Spanish Community)
P.O. Box 803402
Dallas, TX 75380
214/386-9120

Irving News
1000 Avenue H, East
Arlington, TX 76011
Metro 817/695-0500

Mesquite News
P.O. Box 850136
Mesquite, TX 75185
214/285-6302

Metrocrest News
1720 Josey Lane, #100
Carrollton, TX 75006
214/418-9999

North Dallas Community News (Black Community)
12770 Coit road, Suite 602
Dallas, TX 75251
214/352-0304

Oak Cliff Tribune
2303 W. Ledbetter, Suite 200
Dallas, TX 75224
214/339-3111

Park Cities News
8115 Preston Road, Suite 120
Dallas, TX 75225
214/369-7570

Park Cities People
6116 N. Central Expwy., Suite 230
Dallas, TX 75206
214/739-2244

Plano Star-Courier
801 E. Plano Parkway
Plano, TX 75074
214/424-6565

Richardson News
P.O. Box 830630
Richardson, TX 75083
214/234-3198

Monthly Newspaper
Minority Business News (For all minorities)
11333 N. Central Expwy., Suite 201
Dallas, TX 75243
214/369-3200

MAGAZINES

Advertising Age
21 Robin Lake
Houston, TX 77024
713/952-2065

Adweek
2909 Cole Ave.
Suite 220
Dallas, TX 75204
214/871-9550

Business Horizons Magazine
The World Trade Center
2050 Stemmons Freeway, Suite 175
P.O. Box 58203
Dallas, TX 75258-9998
214/748-7870

Business Week
1509 Main St.
Suite 603
Dallas, TX 75201
214/760-7413

Dallas Family
3102 Oaklawn, Suite 540
Dallas, TX 75219
214/443-0440

Texas Monthly
P.O. Box 1569
Austin, TX 78767
512/476-7085

Today's Dallas Woman
3810 Inwood Road, Suite 203
Dallas, TX 75209
214/350-9880

RADIO

KDMX-FM (102.9)
Format: Adult Contemporary
1353 Regal Row
Dallas, TX 75247
214/688-0641

KEGL-FM (97.1)
Format: Contemporary Hit Radio
One Xerox Center, Suite 1400
222 Las Colinas Blvd.
Irving, TX 75039
214/869-9700

KERA-FM (90.1)
Format: News/Public Affairs/Adult Alternative
3000 Harry Hines Blvd.
Dallas, TX 75201
214/871-1390

KESS-AM (1270)
Format: Spanish
7700 Carpenter Freeway
Dallas, TX 75247
214/263-0700

KFJZ-AM (870)
Format: Spanish
2214 East 4th
Fort Worth, TX 76102
Metro (817) 429-1630

KGBS-AM (1190)
Format: News & Information
3500 Maple Ave., Suite 1470-LB 46
Dallas, TX 75219
214/526-2580

KISS-FM (106.1)
Format: Top 40
8235 Douglas, Suite 300
Dallas, TX 75225
214/891-3400

KJMZ-FM (100.3) Urban Contemporary
KHVN-AM (970) Gospel Inspirational Music
545 E. John Carpenter Freeway, 17th Floor
Irving, TX 75062
214/556-8100

KKDA-FM (104.5) Urban Contemporary
KKDA-AM (730) Urban/Adult
621 Northwest 6th Street
Grand Prairie, TX 75053
214/263-9911

KLIF-AM (570) All Talk
KPLX-FM (99.5) Modern Country
3500 Maple Ave.
Suite 1600
Dallas, TX 75219
214/526-2400

KLUV-FM (98.7)
Format: Oldies
4131 N. Central Expressway., Suite 700
Dallas, TX 75204
214/526-9870

KNON-FM (89.3)
Format: Community Radio
P.O. Box 710909
Dallas, TX 75371
214/828-9500

KOAI-FM (107.5)
Format: Smooth Jazz
5956 Sherry Lane, Suite 2000
Dallas, TX 75225
214/691-1075

KRLD-AM (1080
Format: News, Sports & Information
1080 Metromedia Place
Dallas, TX 75247
214/634-1080

KSNN (94.9) Sunny 95
Format: Oldies, Country
545 E. John Carpenter Freeway, Suite 1560
Dallas, TX 75062
214/556-1092

KSSA-AM (1600) Variety/"Radio Variedades"
KRVA-FM Contemporary Spanish/"Latin 107"
3500 Maple Ave., Suite 1310
Dallas, TX 75219
214/528-1600

KVIL-FM/AM
Format: Adult Contemporary
9400 North Central Expwy., Suite 1600
Dallas, TX 75231
214/691-1037

KTXQ-FM (102.1)
Format: Album Rock
4131 N. Central Expressway, Suite 1200
Dallas, TX 75204
214/528-5500

KZPS-FM (92.5) Classic Rock
KAAM-AM (1310) Big Band & Great Singers
15851 Dallas Parkway, Suite 1200
Dallas, TX 75248
214/770-7777

KXEB-AM (910)
Format: Spanish - Language
8204 Elmbrook Drive, Suite 119
Dallas, TX 75247
214/426-6110

KYNG-FM (105.3)
Format: Young Country
2 Forest Plaza
12201 Merit Drive, Suite 930
Dallas, TX 75251
214/716-7800

WBAP-AM (820) Country/MOR
KSCS-FM (96.3) Continuous Country
One Broadcast Hill
Fort Worth, TX 76103
Metro(817)429-2330

WRR-FM
Fair Park Grounds
1516 1st Avenue
Dallas, TX 75266
(214) 670-8888

TELEVISION

Channel 4- KDFW
400 N. Griffin
Dallas, TX 75202
214/720-4444

Channel 5 - KXAS
3900 Barnett St.
Fort Worth, TX 76101
Metro 817/429-5555

Channel 5 - KXAS
3100 McKinnon, Suite 370
Dallas, TX 75201
214/745-5555

Channel 8 - WFAA
Communications Center
606 Young St.
Dallas, TX 75202
214/748-9631

Channel 11 - KTVT
5233 Bridge St.
Fort Worth, TX 76103
(Metro) 817/654-1100

2777 Stemmon Freeway
Stemmons Place, Suite 1189
Dallas, TX 75207
214/637-2211

Channel 13 -KERA (PBS)
3000 Harry Hines Blvd.
Dallas, TX 75201
214/871-1390

Channel 21 - KTXA
1712 E. Randol Mill Road
Arlington, TX 76011
817/265-2100

Channel 23- KUVN
3720 Marquis
Garland, TX 75042
214/494-0023

Channel 27 - KDFI
433 Regal Row
Dallas, TX 75247
214/637-2727

Channel 33 - KDAF
8001 Carpenter Freeway
Dallas, TX 75247
214/634-8833

Channel 39 - KXTX
3900 Harry Hines Blvd.
Dallas, TX 75219
214/521-3900

Cable News Network (CNN)
1201 Main Street, Suite 1525
Dallas, TX 75202
214/747-1440

SUMMARY COMMENTS FOR THE DALLAS AREA

The central point of data presented, concerning various communities in which portions of District 30 serves, is that there is one economy, one transportation system, one media/communications system and one higher educational system. An example is that each city lists DART (Dallas Area Rapid Transit) as a local transportation system. Indeed it is possible to travel to all parts of the district, except that small area of Grand Prairie, by bus. Each city lists the major media. Each identifies Love Field and DFW as airport servers. Each identifies the same colleges and universities as available to the citizens of their respective communities.

Urban congressional districts, because of the population densities, can physically appear rather odd. The principal reason for this is that the densities require using a very precise census tool, i.e., census blocks, as geographic limits. This then produces a peculiar looking map. The truth, however, is that District 30 is quite compact. It represents a constituency that has a genuine focus not only for black citizens but the region as a whole.

Common political issues this year alone include: the Super Conducting Super Collider whose economic value was for all of the DFW area; funding for the C-17 defense project; the effort to rename a Federal building, in downtown Dallas, after A. Maceo Smith.

Obviously, the District 30 populations tends to be younger, less well educated, in lower socio-economic groups, with higher unemployment and a greater proportion of non-white. Than the other congressional districts in the Dallas area. The resolution of these challenges is in union with the other districts. However one would wish to divide the city, the constituent demands are the same: jobs; opportunities; community safety.

DALLAS METROPOLITAN AREA - 30TH CONGRESSIONAL DISTRICT

Extracted from the U.S. Dept. of Commerce, Bureau of Census 1990 Census

30TH CONGRESSIONAL DISTRICT

Place & County Subdivision

City	Persons
Arlington (pt)	292
Balch Springs (pt)	1,179
Dallas (pt)	453,114
DeSoto (pt)	18,384
Duncanville (pt)	5,935
Farmers Branch (pt)	1,482
Garland (pt)	876
Grand Prairie (pt)	27,688
Irving (pt)	21,844
Lancaster (pt)	16,824
Mesquite (pt)	91
Plano (pt)	6,900
Richardson (pt)	6,892

Age

00-19 Years Old -	177,203	(35%)
20-24 Years Old -	124,159	(24%)
25-34 Years Old -	79,336	(16%)
35-44 Years Old -	48,333	(9%)
45 + Years Old -	81,087	(16%)

Ethnicity

White	212,481
Black	283,225
Amerind	2,285
Asian	11,322
Other	56,904
Hispanic	96,732

Place of Birth

Native	507,194
Born in State	375,467
Born in diff. State	127,797
Born Abroad	3,930
Foreign born	59,783

Residence in 1985

Same House	-	216,478
Different house in U.S	-	285,640
Same county	-	201,745
Different county	-	83,895

Workers over 16 years of age, transportation to work

Car, truck or van	-	228,059
Drove alone	-	181,913
Carpooled	-	46,156
Public transp.	-	20,515
Walked	-	8,681
Other means	-	3,004
Worked at home	-	3,647

Mean travel time to work (Minutes) - 24.7

DALLAS COUNTY STATISITICAL FACTS

Age

00-19 Years Old -	536,215	(29%)
20-24 Years Old -	148,342	(8%)
25-34 Years Old -	404,068	(22%)
35-44 Years Old -	290,840	(16%)
45 + Years Old -	465,345	(25%)

Ethnicity

White	1,070,096
Black	143,850
Amerind	3,237
Asian	19,181
Other	81,387
Hispanic	150,033

Place of Birth

Native	1,654,543
Born in State	1,099,154
Born in diff. State	555,389
Born Abroad	17,666
Foreign born	196,328

Residence in 1985

Same House	-	759,586
Different house in U.S.	-	893,187
Same county	-	616,568
Different county -	-	220,542

Workers over 16 years of age, transportation to work

Car, truck or van	-	854,485
Drove alone	-	718,709
Carpooled	-	135,776
Public transp.	-	39,986
Walked	-	19,027
Other means	-	9,168
Worked at home -		20,480

Mean travel time to work (Minutes) - ?

DALLAS METROPOLITAN AREA - 30TH CONGRESSIONAL DISTRICT

Extracted from the U.S. Dept. of Commerce, Bureau of Census 1990 Census

Education

Persons 3 yrs + enrolled in School		
Preprimary school	-	13,370
Elementary or HS	-	104,093
Public school	-	98,529
College	-	36,881
Public college	-	28,445
Persons 25 years & over education level		
Less than 9th grade	-	43,057 (11%)
9th to 12th, no diploma	-	62,316 (16%)
HS Graduate (incl. GED)	-	88,707 (23%)
Some college, no degree	-	69,152 (18%)
Associate degree	-	71,551 (18%)
Bachelor's degree	-	38,611 (10%)
Grad. or Prof. degree	-	16,359 (4%)
Labor Force Status		
In labor force	-	299,919
Civ. labor force	-	298,834
Employed	-	270,387
Unemployed	-	28,447
Females 16 years & over	-	220,060
In labor force	-	142,428
Civ. labor force	-	142,313
Employed	-	129,161
Unemployed	-	13,152
Class of Worker		
Private wage & salary wkrs.	-	222,964
Local government wkrs.	-	17,681
State government wkrs.	-	6,116
Federal government wkrs.	-	10,078
Self employed wkrs.	-	12,853
Unpaid family wkrs.	-	695
Occupation, employed 16 years & older		
Managerial & professional sp.	-	53,514
Exec., admin. & mngrial occ.	-	57,098
Professional specialty occ.	-	26,316
Tech., sales & adm. sup. occ.	-	91,611
Technicians & related support	-	9,292
Sales occupations	-	29,339
adm. support incl. clerical	-	52,980
Service occupations	-	48,658
Private household occupations	-	3,329
Protective svc. occupations	-	4,480
Svc. occ. except prot. & hhld	-	40,849
Farming, forestry & fishing oc	-	3,535
Precision prod., crft & repair	-	29,941
Opertrs., fabrictrs & laborers	-	47,228
Mach. oper. assmblrs & insp.	-	20,225
Transp., & mtrial moving occ.	-	13,017
Mndlr. eqpt clnr, hlpr & lab	-	13,986

Education

Persons 3 yrs + enrolled in School		
Preprimary school	-	33,420
Elementary or HS	-	320,060
Public school	-	293,933
College	-	126,195
Public college	-	96,166
Persons 25 years & over education level		
Less than 9th grade	-	113,762 (10%)
9th to 12th, no diploma	-	151,089 (13%)
HS Graduate (incl. GED)	-	222,700 (24%)
Some college, no degree	-	255,960 (22%)
Associate degree	-	65,701 (6%)
Bachelor's degree	-	210,561 (18%)
Grad. or Prof. degree	-	94,480 (7%)
Labor Force Status		
In labor force	-	1,029,714
Civ. labor force	-	1,027,204
Employed	-	962,376
Unemployed	-	64,828
Females 16 years & over	-	723,451
In labor force	-	469,831
Civ. labor force	-	469,556
Employed	-	440,948
Unemployed	-	28,608
Class of Worker		
Private wage & salary wkrs.	-	796,446
Local government wkrs.	-	53,919
State government wkrs.	-	19,294
Federal government wkrs.	-	26,757
Self employed wkrs.	-	62,189
Unpaid family wkrs.	-	3,771
Occupation, employed 16 years & older		
Managerial & professional sp.	-	270,732
Exec., admin. & mngrial occ.	-	140,971
Professional specialty occ.	-	129,761
Tech., sales & adm. sup. occ.	-	344,783
Technicians & related support	-	37,430
Sales occupations	-	126,802
adm. support incl. clerical	-	180,551
Service occupations	-	120,455
Private household occupations	-	6,461
Protective svc. occupations	-	13,586
Svc. occ. except prot. & hhld	-	100,408
Farming, forestry & fishing oc	-	9,847
Precision prod., crft & repair	-	93,252
Opertrs., fabrictrs & laborers	-	123,307
Mach. oper. assmblrs & insp.	-	54,154
Transp., & mtrial moving occ.	-	33,392
Mndlr. eqpt clnr, hlpr & lab	-	35,761

DALLAS METROPOLITAN AREA - 38TH CONGRESSIONAL DISTRICT

Extracted from the U.S. Dept. of Commerce, Bureau of Census 1990 Census

Industry, employed 16 years & older		
Agriculture, forestry & fishry	- 5,066	(2%)
Construction	-13,338	(5%)
Manufacturing-Nondurable goods	-15,714	(6%)
Manufacturing-Durable goods	-25,269	(9%)
Transportation	-16,158	(6%)
Communication & other pub util	- 8,415	(3%)
Wholesale trade	-14,015	(5%)
Retail trade	-49,421	(18%)
Finance, insurance & real est	-25,630	(9%)
Business & repair services	-19,553	(7%)
Personal, entertain & rec svcs	-17,595	(7%)
Professional health services	-19,455	(7%)
Professional educational svcs	-15,787	(6%)
Other prof & related svcs	-15,362	(6%)
Public administration	- 9,589	(4%)

Persons 16 & over who worked in 1989	
Usually wrkd 35+ hr wk 50-52 wks-	172,040
Usually wrkd 35+ hr wk 40-49 wks-	33,312
Usually wrkd 35+ hr wk 27-39 wks-	16,681
Usually wrkd 34- hr wk 40-52 wks-	23,599

Work in family in 1989	
No workers	14,097
1 worker	43,086
2 or more workers	76,833

Income (in 1989 dollars)		
Number of Households	(211,272)	
Household Less than $5,000	- 20,917	(10%)
Household $5,000 to $9,999	- 21,830	(10%)
Household $10,000 to $14,999	- 22,976	(11%)
Household $15,000 to $24,999	- 47,531	(22%)
Household $25,000 to $34,999	- 36,202	(17%)
Household $35,000 to $49,999	- 31,492	(15%)
Household $50,000 to $74,999	- 20,105	(10%)
Household $75,000 to $99,999	- 5,631	(3%)
Household $100,000 or more	- 4,586	(2%)
Median (dollars)	$23,144	
Number of families	(134,016)	
with income less than $5,000	- 11,837	(9%)
$5,000 to $9,999	- 11,108	(8%)
$10,000 to $14,999	- 13,625	(10%)
$15,000 to $24,999	- 28,179	(21%)
$25,000 to $34,999	- 22,767	(17%)
$35,000 to $49,999	- 22,414	(17%)
$50,000 to $74,999	- 15,783	(12%)
$75,000 to $99,999	- 4,626	(3%)
$100,000 or more	- 3,677	(3%)
Median (dollars)	$25,900	

Industry, employed 16 years & older		
Agriculture, forestry & fishry	- 10,914	(1%)
Construction	- 50,922	(5%)
Manufacturing-Nondurable goods	- 54,583	(6%)
Manufacturing-Durable goods	- 97,395	(10%)
Transportation	- 50,396	(5%)
Communication & other pub util	- 35,280	(4%)
Wholesale trade	- 57,702	(6%)
Retail trade	-164,421	(18%)
Finance, insurance & real est	- 98,872	(12%)
Business & repair services	- 67,732	(7%)
Personal, entertain & rec svcs	- 37,695	(4%)
Professional health services	- 60,037	(6%)
Professional educational svcs	- 58,128	(6%)
Other prof & related svcs	- 70,030	(7%)
Public administration	- 28,754	(3%)

Persons 16 & over who worked in 1989	
Usually wrkd 35+ hr wk 50-52 wks-	270,077
Usually wrkd 35+ hr wk 40-49 wks-	48,947
Usually wrkd 35+ hr wk 27-39 wks-	28,417
Usually wrkd 34- hr wk 40-52 wks-	106,825

Work in family in 1989	
No workers	37,132
1 worker	133,929
2 or more workers	297,352

Income (in 1989 dollars)		
Number of Households	(703,321)	
Household Less than $5,000	- 39,611	(6%)
Household $5,000 to $9,999	- 47,020	(7%)
Household $10,000 to $14,999	- 55,025	(8%)
Household $15,000 to $24,999	- 128,348	(18%)
Household $25,000 to $34,999	- 117,551	(17%)
Household $35,000 to $49,999	- 128,263	(18%)
Household $50,000 to $74,999	- 108,985	(15%)
Household $75,000 to $99,999	- 39,330	(5%)
Household $100,000 or more	- 39,486	(6%)
Median (dollars)	$32,619	
Number of families	(468,413)	
with income less than $5,000	- 20,541	(4%)
$5,000 to $9,999	- 21,747	(5%)
$10,000 to $14,999	- 30,659	(6%)
$15,000 to $24,999	- 73,721	(16%)
$25,000 to $34,999	- 77,099	(16%)
$35,000 to $49,999	- 93,074	(20%)
$50,000 to $74,999	- 88,590	(19%)
$75,000 to $99,999	- 33,444	(7%)
$100,000 or more	- 34,038	(7%)
Median (dollars)	$39,104	

18TH AND 29TH CONGRESSIONAL DISTRICTS

Both of these districts are essentially in the city of Houston and represent historic political wards of the city. These wards have long traditions as African-American and Hispanic communities.

The configurations of these districts show boundaries which at first glance appear complicated. This is due in large part to the utilization of census block data for the district compilations. This degree of detail is characteristic of urban data and represents precision unique to city areas.

The populations in all the Houston districts share the same political concerns with regard to education, employment, and transportation issues. The tabular demographis shown on the next few pages indicate that while the populations in districts 18 and 29 are younger, poorer, and essentially non-white the work force characteristics are very similar with the rest of the population in Harris County.

In total physical size districts 18 and 29 are small as congressional districts. It is possible to visit all parts of either district in any direction in less than 1 hour.

The media and other communication accesses to these districts is similar. They share radio, press, TV systems with all the congressional districts in Harris County.

[Map of Harris County Congressional District
omitted in Printing]

HARRIS COUNTY - 18TH CONGRESSIONAL DISTRICT

Extracted from the U.S. Dept. of Commerce, Bureau of the Census 1990 Census

18TH CONGRESSIONAL DISTRICT		HARRIS COUNTY STATISTICAL FACTS	
Place & County Subdivision			
City	Persons		
Aldine CDP (pt)	5,708		
Galena Park (pt)	-		
Houston city (pt)	458,411		
Humble city (pt)	1,248		
Age		**Age**	
00-19 Years Old -	170,812 (30%)	00-19 Years Old -	887,500 (31%)
20-24 Years Old -	50,076 (9%)	20-24 Years Old -	217,106 (8%)
25-34 Years Old -	113,963 (20%)	25-34 Years Old -	579,646 (20%)
35-44 Years Old -	84,883 (15%)	35-44 Years Old -	468,101 (17%)
45 + Years Old -	145,853 (26%)	65 + Years Old -	665,846 (24%)
Ethnicity		**Ethnicity**	
White	213,315	White	1,070,096
Black	288,382	Black	143,850
Amerind	1,276	Amerind	3,237
Asian	17,180	Asian	19,181
Other	46,064	Other	81,387
Hispanic	86,840	Hispanic	150,033
Place of Birth		**Place of Birth**	
Native	505,809	Native	2,414,225
Born in State	377,258	Born in State	1,598,273
Born in diff. State	124,616	Born in diff. State	784,099
Born Abroad	3,935	Born Abroad	31,853
Foreign born	25,830	Foreign born	403,974
Residence in 1985		**Residence in 1985**	
Same House -	237,792	Same House -	1,163,661
Different house in U.S -	247,038	Different house in U.S -	1,106,617
Same county -	195,169	Same county -	761,539
Different county -	120,265	Different county -	345,078
Workers over 16 years of age, transportation to work		**Workers over 16 years of age, transportation to work**	
Car, truck or van -	210,379	Car, truck or van -	2,016,974
Drove alone -	172,296	Drove alone -	1,021,841
Carpooled -	38,083	Carpooled -	195,934
Public transp. -	20,500	Public transp. -	60,319
Walked -	7,749	Walked -	31,984
Other means -	3,505	Other means -	16,628
Worked at home -	4,579	Worked at home -	27,462
Mean travel time to work (Minutes) - 25.3		*Mean travel time to work (Minutes) - ?*	

HARRIS COUNTY - 18TH CONGRESSIONAL DISTRICT

Extracted from the U.S. Dept. of Commerce, Bureau of the Census 1990 Census

Education

Persons 3 yrs + enrolled in School	
Preprimary school	8,281
Elementary or HS	104,070
Public school	98,617
College	41,792
Public college	35,081

Persons 25 years & over education level		
Less than 9th grade	44,513	(13%)
9th to 12th, no diploma	70,659	(20%)
HS Graduate (incl. GED)	90,684	(26%)
Some college, no degree	65,119	(19%)
Associate degree	13,762	(4%)
Bachelor's degree	39,721	(12%)
Grad. or Prof. degree	20,868	(6%)

Labor Force Status

In labor force	282,546
Civ. labor force	282,255
Employed	252,439
Unemployed	29,816
Females 16 years & over	220,140
In labor force	130,698
Civ. labor force	139,679
Employed	116,500
Unemployed	14,179

Class of Worker

Private wage & salary wkrs.	201,728
Local government wkrs.	17,109
State government wkrs.	11,428
Federal government wkrs.	6,434
Self employed wkrs.	15,079
Unpaid family wkrs.	661

Occupation, employed 16 years & older

Managerial & professional sp.	57,552
Exec., admin. & mngrial occ.	25,769
Professional specialty occ.	31,783
Tech., sales & adm. sup. occ.	80,747
Technicians & related support	10,367
Sales occupations	27,753
adm. support incl. clerical	42,627
Service occupations	46,339
Private household occupations	3,440
Protective svc. occupations	5,146
Svc. occ. except prot. & hhld	37,773
Farming, forestry & fishing oc	2,657
Precision prod., crft & repair	26,746
Opertrs., fabricrs & laborers	38,380
Mach. oper, assmblrs & insp.	11,936
Transp., & mrtal moving occ.	14,650
Mndlr, eqpt clnr, hlpr & lab	11,794

Education

Persons 3 yrs + enrolled in School	
Preprimary school	54,476
Elementary or HS	544,619
Public school	510,010
College	197,317
Public college	165,207

Persons 25 years & over education level		
Less than 9th grade	194,339	(12%)
9th to 12th, no diploma	235,397	(14%)
HS Graduate (incl. GED)	398,463	(23%)
Some college, no degree	365,313	(21%)
Associate degree	84,790	(5%)
Bachelor's degree	297,044	(17%)
Grad. or Prof. degree	138,728	(9%)

Labor Force Status

In labor force	1,486,661
Civ. labor force	1,484,762
Employed	1,381,829
Unemployed	102,933
Females 16 years & over	1,065,328
In labor force	649,767
Civ. labor force	649,610
Employed	601,710
Unemployed	47,900

Class of Worker

Private wage & salary wkrs.	1,142,010
Local government wkrs.	67,365
State government wkrs.	47,623
Federal government wkrs.	27,295
Self employed wkrs.	85,263
Unpaid family wkrs.	5,161

Occupation, employed 16 years & older

Managerial & professional sp	397,591
Exec., admin. & mngrial occ.	192,517
Professional specialty occ.	205,074
Tech., sales & adm. sup. occ	469,424
Technicians & related support	60,852
Sales occupations	180,067
adm. support incl. clerical	228,505
Service occupations	174,911
Private household occupations	10,569
Protective svc. occupations	23,275
Svc. occ. except prot. & hhld	141,067
Farming, forestry & fishing oc	13,298
Precision prod., crft & repair	157,027
Opertrs., fabricrs & laborers	169,578
Mach. oper, assmblrs & insp.	60,812
Transp., & mrtal moving occ.	52,609
Mndlr, eqpt clnr, hlpr & lab	56,157

HARRIS COUNTY - 18TH CONGRESSIONAL DISTRICT

Industry: employed 16 years & older			Industry: employed 16 years & older		
Agriculture, forestry & fishry	8,024	(3%)	Agriculture, forestry & fishry	14,608	(1%)
Construction	16,528	(7%)	Construction	114,099	(9%)
Manufacturing-Nondurable goods	12,567	(5%)	Manufacturing-Nondurable goods	88,011	(7%)
Manufacturing-Durable goods	15,817	(6%)	Manufacturing-Durable goods	98,769	(7%)
Transportation	16,850	(7%)	Transportation	[illegible]	(4%)
Communication & other pub util	7,141	(3%)	Communication & other pub util	[illegible]	(3%)
Wholesale trade	13,738	(5%)	Wholesale trade	85,615	(6%)
Retail trade	44,489	(18%)	Retail trade	231,667	(17%)
Finance, insurance & real est	16,059	(6%)	Finance, insurance & real est	102,124	(8%)
Business & repair services	17,362	(7%)	Business & repair services	90,860	(7%)
Personal, entertain & rec svcs	14,802	(6%)	Personal, entertain & rec svcs	61,886	(5%)
Professional health services	23,439	(9%)	Professional health services	96,666	(7%)
Professional educational svcs	20,931	(8%)	Professional educational svcs	101,263	(8%)
Other prof & related svcs	16,595	(7%)	Other prof & related svcs	97,587	(7%)
Public administration	8,139	(3%)	Public administration	39,399	(3%)
Persons 16 & over who worked in 1989			**Persons 16 & over who worked in 1989**		
Usually wrkd 35+ hr wk 50-52 wks	155,163		Usually wrkd 35+ hr wk 50-52 wks	895,574	
Usually wrkd 35+ hr wk 40-49 wks	31,433		Usually wrkd 35+ hr wk 40-49 wks	160,412	
Usually wrkd 35+ hr wk 27-39 wks	16,704		Usually wrkd 35+ hr wk 27-39 wks	81,255	
Usually wrkd 34- hr wk 40-52 wks	24,945		Usually wrkd 34- hr wk 40-52 wks	106,803	
Work in family in 1989			**Work in family in 1989**		
No workers	17,510		No workers	58,409	
1 worker	44,126		1 worker	225,811	
2 or more workers	70,773		2 or more workers	424,611	
Income (in 1989 dollars)			**Income (in 1989 dollars)**		
Number of Households	(208,265)		**Number of Households**	(1,027,818)	
Household Less than $5,000	26,233	(13%)	Household Less than $5,000	70,926	(6%)
Household $5,000 to $9,999	22,678	(11%)	Household $5,000 to $9,999	75,331	(7%)
Household $10,000 to $14,999	22,481	(11%)	Household $10,000 to $14,999	85,695	(8%)
Household $15,000 to $24,999	41,690	(20%)	Household $15,000 to $24,999	187,285	(18%)
Household $25,000 to $34,999	33,200	(16%)	Household $25,000 to $34,999	160,819	(16%)
Household $35,000 to $49,999	30,415	(14%)	Household $35,000 to $49,999	176,619	(17%)
Household $50,000 to $74,999	21,240	(10%)	Household $50,000 to $74,999	160,469	(16%)
Household $75,000 to $99,999	5,972	(3%)	Household $75,000 to $99,999	59,763	(6%)
Household $100,000 or more	4,356	(2%)	Household $100,000 or more	56,911	(6%)
Median (dollars)	$22,531		**Median (dollars)**	$32,619	
Number of families	(132,489)		**Number of families**	(708,831)	
with income less than $5,000	14,129	(11%)	with income less than $5,000	38,368	(5%)
$5,000 to $9,999	11,589	(9%)	$5,000 to $9,999	37,954	(5%)
$10,000 to $14,999	13,440	(11%)	$10,000 to $14,999	50,488	(7%)
$15,000 to $24,999	25,400	(19%)	$15,000 to $24,999	109,385	(15%)
$25,000 to $34,999	21,053	(16%)	$25,000 to $34,999	103,193	(15%)
$35,000 to $49,999	22,280	(17%)	$35,000 to $49,999	132,622	(19%)
$50,000 to $74,999	16,627	(13%)	$50,000 to $74,999	134,116	(19%)
$75,000 to $99,999	4,633	(4%)	$75,000 to $99,999	52,363	(8%)
$100,000 or more	3,077	(3%)	$100,000 or more	50,342	(7%)
Median (dollars)	$25,662		**Median (dollars)**	$39,184	

HARRIS COUNTY - 29TH CONGRESSIONAL DISTRICT

29TH CONGRESSIONAL DISTRICT

Place & County Subdivision

City	Persons
Aldine (pl)	5,614
Bayshown (pl)	11,878
Channelview (pl)	1,617
Cloverleaf (pl)	2,928
Deer Park (pl)	3,184
Galena Park (pl)	10,033
Houston city (pl)	428,876
La Porte (pl)	-
Pasadena (pl)	40,735
South Houston city (pl)	13,175

Age

00-19 Years Old	-	241,441	(44%)
20-24 Years Old	-	63,223	(12%)
25-34 Years Old	-	140,099	(25%)
35-44 Years Old	-	87,961	(15%)
45 + Years Old	-	80,011	(14%)

Ethnicity

White	-	307,612
Black	-	57,811
Amerind	-	1,881
Asian	-	8,756
Other	-	-
Hispanic	-	338,890

Place of Birth

Native		416,937
Born in State		335,594
Born in diff. State		81,343
Born Abroad		-
Foreign born		150,000

Residence in 1985

Same House	-	216,478
Different house in U.S.	-	285,640
Same county	-	201,745
Different county	-	83,895

Workers over 16 years of age, transportation to work

Car, truck or van	-	228,069
Drove alone	-	181,913
Carpooled	-	46,156
Public transp.	-	20,513
Walked	-	8,681
Other means	-	3,004
Worked at home	-	3,647

*Mean travel time to work (Minutes) - 24 *

HARRIS COUNTY STATISTICAL FACTS

Age

00-19 Years Old	-	887,500	(31%)
20-24 Years Old	-	217,106	(8%)
25-34 Years Old	-	579,646	(20%)
35-44 Years Old	-	468,101	(17%)
45 + Years Old	-	665,846	(24%)

Ethnicity

White	-	1,070,096
Black	-	143,850
Amerind	-	3,237
Asian	-	19,181
Other	-	81,387
Hispanic	-	150,033

Place of Birth

Native		2,414,225
Born in State		1,598,273
Born in diff. State		784,099
Born Abroad		31,853
Foreign born		403,974

Residence in 1985

Same House	-	1,163,661
Different house in U.S.	-	1,106,617
Same county	-	761,539
Different county	-	345,078

Workers over 16 years of age, transportation to work

Car, truck or van	-	2,016,974
Drove alone	-	1,021,841
Carpooled	-	195,934
Public transp.	-	60,319
Walked	-	31,984
Other means	-	16,628
Worked at home	-	27,462

*Mean travel time to work (Minutes) - *

HARRIS COUNTY - 29TH CONGRESSIONAL DISTRICT

Education

Persons 3 yrs + enrolled in School		
Preprimary school	-	13,470
Elementary or HS	-	104,093
Public school	-	98,529
College	-	36,818
Public college	-	28,665

Persons 25 years & over education level			
Less than 9th grade	-	43,057	(13%)
9th to 12th, no diploma	-	62,316	(19%)
HS Graduate (incl. GED)	-	88,707	(26%)
Some college, no degree	-	69,152	(21%)
Associate degree	-	17,551	(5%)
Bachelor's degree	-	38,611	(11%)
Grad. or Prof. degree	-	16,359	(5%)

Labor Force Status

In labor force	-	299,919
Civ. labor force	-	298,834
Employed	-	270,387
Unemployed	-	28,447
Females 16 years & over	-	220,060
In labor force	-	142,428
Civ. labor force	-	142,313
Employed	-	129,161
Unemployed	-	13,152

Class of Worker

Private wage & salary wkrs.	-	222,964
Local government wkrs.	-	17,681
State government wkrs.	-	6,116
Federal government wkrs.	-	10,078
Self employed wkrs.	-	12,853
Unpaid family wkrs.	-	695

Occupation, employed 16 years & older

Managerial & professional sp.	-	53,414
Exec., admin. & mngrial occ.	-	27,098
Professional specialty occ.	-	26,316
Tech., sales & adm. sup. occ.	-	91,611
Technicians & related support	-	9,292
Sales occupations	-	29,339
adm. support incl. clerical	-	52,980
Service occupations	-	48,658
Private household occupations	-	3,329
Protective svc. occupations	-	4,480
Svc. occ. except prot. & hhld	-	40,849
Farming, forestry & fishing oc	-	3,535
Precision prod., crft & repair	-	25,941
Opertrs., fabricrs & laborers	-	47,228
Mach. oper. assmblrs & insp.	-	20,225
Transp., & mtrial moving occ.	-	13,017
Mndlr. expt clnr. hlpr & lab	-	13,986

Education

Persons 3 yrs + enrolled in School		
Preprimary school	-	54,476
Elementary or HS	-	544,419
Public school	-	510,010
College	-	197,317
Public college	-	165,207

Persons 25 years & over education level			
Less than 9th grade	-	194,339	(12%)
9th to 12th, no diploma	-	235,397	(14%)
HS Graduate (incl. GED)	-	398,463	(23%)
Some college, no degree	-	365,313	(21%)
Associate degree	-	84,299	(5%)
Bachelor's degree	-	297,044	(17%)
Grad. or Prof. degree	-	138,728	(9%)

Labor Force Status

In labor force	-	1,486,661
Civ. labor force	-	1,484,762
Employed	-	1,381,829
Unemployed	-	102,933
Females 16 years & over	-	1,065,328
In labor force	-	649,767
Civ. labor force	-	649,610
Employed	-	601,710
Unemployed	-	47,900

Class of Worker

Private wage & salary wkrs.	-	1,142,010
Local government wkrs.	-	67,365
State government wkrs.	-	47,623
Federal government wkrs.	-	27,295
Self employed wkrs.	-	85,263
Unpaid family wkrs.	-	5,161

Occupation, employed 16 years & older

Managerial & professional sp.	-	397,591
Exec., admin. & mngrial occ.	-	192,517
Professional specialty occ.	-	205,074
Tech., sales & adm. sup. occ.	-	469,424
Technicians & related support	-	60,852
Sales occupations	-	180,067
adm. support incl. clerical	-	228,505
Service occupations	-	174,911
Private household occupations	-	10,569
Protective svc. occupations	-	23,275
Svc. occ. except prot. & hhld	-	141,067
Farming, forestry & fishing oc	-	13,298
Precision prod., crft & repair	-	157,027
Opertrs., fabricrs & laborers	-	169,578
Mach. oper. assmblrs & insp.	-	60,812
Transp., & mtrial moving occ.	-	52,609
Mndlr. expt clnr. hlpr & lab	-	36,157

HARRIS COUNTY - 29TH CONGRESSIONAL DISTRICT

Industry, employed 16 years & older

Agriculture, forestry & fishry	5,066	(2%)
Construction	13,338	(5%)
Manufacturing-Nondurable goods	15,714	(6%)
Manufacturing-Durable goods	25,269	(10%)
Transportation	16,158	(6%)
Communication & other pub util	8,415	(3%)
Wholesale trade	14,015	(5%)
Retail trade	49,421	(18%)
Finance, insurance & real est	25,650	(9%)
Business & repair services	19,553	(7%)
Personal, entertain & rec svcs	17,595	(6%)
Professional health services	19,455	(7%)
Professional educational svcs	15,787	(6%)
Other prof & related svcs	15,362	(6%)
Public administration	9,589	(4%)

Persons 16 & over who worked in 1989

Usually wrkd 35+ hr wk	50-52 wks	172,040
Usually wrkd 35+ hr wk	40-49 wks	33,312
Usually wrkd 35+ hr wk	27-39 wks	18,681
Usually wrkd 34- hr wk	40-52 wks	23,599

Work in family in 1989

No workers		14,097
1 worker		43,086
2 or more workers		76,833

Income (in 1989 dollars)

Number of Households	(211,272)	
Household Less than $5,000	20,917	(10%)
Household $5,000 to $9,999	21,830	(10%)
Household $10,000 to $14,999	22,976	(11%)
Household $15,000 to $24,999	47,533	(22%)
Household $25,000 to $34,999	36,202	(17%)
Household $35,000 to $49,999	31,492	(15%)
Household $50,000 to $74,999	20,105	(10%)
Household $75,000 to $99,999	5,631	(3%)
Household $100,000 or more	4,586	(2%)
Median (dollars)	$23,144	
Number of families	(134,916)	
with income less than $5,000	11,837	(7%)
$5,000 to $9,999	11,108	(9%)
$10,000 to $14,999	13,625	(10%)
$15,000 to $24,999	28,179	(21%)
$25,000 to $34,999	22,767	(17%)
$35,000 to $49,999	22,414	(17%)
$50,000 to $74,999	15,783	(12%)
$75,000 to $99,999	4,626	(4%)
$100,000 or more	3,677	(3%)
Median (dollars)	$25,998	

Industry, employed 16 years & older

Agriculture, forestry & fishry	14,608	(1%)
Construction	114,099	(9%)
Manufacturing-Nondurable goods	88,011	(7%)
Manufacturing-Durable goods	98,769	(7%)
Transportation	77,761	(5%)
Communication & other pub util	39,277	(3%)
Wholesale trade	85,615	(6%)
Retail trade	231,867	(17%)
Finance, insurance & real est	102,124	(8%)
Business & repair services	90,860	(7%)
Personal, entertain & rec svcs	61,886	(5%)
Professional health services	96,666	(7%)
Professional educational svcs	101,263	(8%)
Other prof & related svcs	97,587	(7%)
Public administration	39,300	(3%)

Persons 16 & over who worked in 1989

Usually wrkd 35+ hr wk	50-52 wks	895,574
Usually wrkd 35+ hr wk	40-49 wks	160,412
Usually wrkd 35+ hr wk	27-39 wks	81,255
Usually wrkd 34- hr wk	40-52 wks	106,803

Work in family in 1989

No workers		58,409
1 worker		225,811
2 or more workers		424,611

Income (in 1989 dollars)

Number of Households	(1,027,818)	
Household Less than $5,000	70,926	(6%)
Household $5,000 to $9,999	75,331	(7%)
Household $10,000 to $14,999	85,695	(8%)
Household $15,000 to $24,999	187,285	(18%)
Household $25,000 to $34,999	160,819	(16%)
Household $35,000 to $49,999	176,619	(17%)
Household $50,000 to $74,999	160,469	(16%)
Household $75,000 to $99,999	59,763	(6%)
Household $100,000 or more	56,911	(6%)
Median (dollars)	$32,619	
Number of families	(700,831)	
with income less than $5,000	38,368	(5%)
$5,000 to $9,999	37,954	(5%)
$10,000 to $14,999	50,488	(7%)
$15,000 to $24,999	109,385	(15%)
$25,000 to $34,999	103,193	(15%)
$35,000 to $49,999	132,622	(19%)
$50,000 to $74,999	134,116	(19%)
$75,000 to $99,999	52,363	(8%)
$100,000 or more	50,342	(7%)
Median (dollars)	$39,184	

CONTEXT FOR CONGRESSIONAL DISTRICTS 18, 29 AND 30

The metropolitan areas of Dallas and Houston (Harris County) are characteristic of post World War II developments in their demography and geography. Both areas are poly centric in character with higher education, industrial, office complex, shopping and social activities highly dispersed into numerous sections. The flat land and circular distribution systems of transportation have created for both areas a fringe activity pattern.

Political districts can be drawn in a number of ways in both cities. The issues of employment, advanced education, economic development and transportation, however, are shared by a highly interdependent region in both cases.

Both Dallas and Houston have large central city office complexes but in terms of square footage and new developments, these centers have long since been dwarfed by the fringe and highway cluster developments such as Greenway and the Post Oak areas of Houston and Las Colinas an LBJ developments in Dallas.

Access to the populations in the districts is also common in both of these metropolitan areas. In both Houston and Dallas, there are common radio, television and press outlets. There are single dioceses, sees and districts for church organizations. Organizations, such as Kiwanis, Rotary, Moose, Lions and Mason are also in the same districts.

Another feature of both metropolitan areas is rapid growth and development. Not only are both urban areas overwhelmingly (70%) post World War II in population and distribution, but also are continuing to grow and evolve. This has created a pattern of high mobility internally and externally. Also the character of the housing has changed in the past 25 years from predominately single family dwelling to apartments

giving even greater fluidity to the continual movement of the population.

In the 80's the rapid growth in population of the areas was characterized by new diversity. Public school enrollments show first impact of the changes with large influxes of Hispanic and Asian children. In both cities, the multi-cultural character of the areas in foreign language communications and media is now well established. For a demographer, it is nearly impossible to predict, at this time, how the geographic distribution of these groups will eventually concentrate (if at all). For example, the first waves of Asian migrants from Southeast Asia came to East Dallas in the early 80's. Within just a few years, this population was relocating to Northeast Dallas and Garland. Today, it is moving even further north into Richardson. The original settlement area of East Dallas still has Asian population but it is much smaller than earlier.

Hispanic movement is equally dynamic. The greatest Increase in neighborhood concentration, particularly in the central and older city cores, is Hispanic. Housing sales in these areas show a strong Hispanic market. Also schools that were only recently non-white or white are increasingly Hispanic.

In Dallas County, the City of Dallas is obviously the largest jurisdiction with the largest population. It is however, approximately 50% of the county. Suburbs and activity centers surround the city. The central city and the suburbs share the same transportation system including rapid transit (DART), shopping, work locations and advanced education sites.

The same exists for Harris County and Houston. The only difference is that Houston is a much larger proportion of the land area of Harris County. MTA is the counterpart to DART as a rapid transit system.

State's Exhibit 23

Statement of Justice Oscar Mauzy from *Vera v. Richards*, heard in the United States District Court for the Southern District of Texas

Dated June 22, 1994

BEFORE ME, the undersigned Notary Public on this date personally appeared Oscar Mauzy who, duly sworn, and who, upon his oath, deposed and stated as follows:

1. My name is Oscar Mauzy. I am over the age of eighteen and am competent to make this affidavit.

2. I served on the Texas Supreme Court from January 3, 1987 until January 1, 1993.

3. I served in the Texas Senate from January 1967 until January 1987, representing the 23rd Senatorial District from Dallas County, Texas. My successor in the 23rd Senatorial District was Eddie Bernice Johnson, who served that District until she was elected to Congress in Congressional District 30.

4. The Texas Legislature, during the 20th century, has been called upon to redistrict the congressional districts of Texas after nearly each decennial census, since the population of Texas grew at percentage rate higher than the national population increase. Thus, following the census of 1910, 1930, 1950, 1960, 1970, 1980 & 1990 the size of the Texas congressional delegation increased. The 1910 census increased the number of congressional seats from 16 to 18; from 18 to 21 in 1930; from 21 to 22 in 1950; from 22 to 23 in 1960; from 23 to 24 in 1970; from 24 to 27 in 1980; and from 27 to 30 in 1990.

5. During this same period of time, the size of the Texas Senate remained constant at 31. Therefore, during the 20th century, the rapid growth of population in Texas reduced the ratio of congressional districts from 2-1 in 1901 (16 congressional vs. 31 state senatorial districts) to its present 1-1 ratio in 1991 (30 congressional vs. 31 state senatorial districts). This factor, when combined with the advent of the doctrine of "one person -- one vote" as announced by the Supreme Court of the United States in 1962 in *Baker v. Carr*, has resulted in the members of the Texas Senate taking a very keen interest in the drawing of congressional district lines. Indeed many members of the Texas Senate have "graduated" directly from the Texas Senate to the U.S. House of Representatives in the first election held after congressional redistricting occurs. For example, all three new Texas congresspersons elected in 1992 were state senators from these same areas: Johnson of Dallas; Green of Harris and Tejeda of Bexar Counties. This relationship is not coincidental.

6. Prior to *Baker v. Carr*, as specifically shown in the census of 1960, the legislature in adding one seat, decided to make that new seat an "at-large" seat. In this way, the Legislature recognized the value of "protecting the incumbent". In addition, compactness of congressional districts was not a viable concern. This system resulted in the Texas congressional delegation acquiring increased seniority which added to the state's "political" clout in Congress, where seniority was critical. After *Baker v. Carr*, this system was not available to the Legislature and, therefore, there have been no "at large" seats added to the congressional delegation following the 1970, 1980 or 1990 censuses.

7. During the congressional redistricting of 1967, incumbency was the major factor when the Senate acted on this subject. The 6th congressional district was

specifically drawn to "invade" both Dallas and Tarrant Counties for the first time in order to "protect" the incumbent Olin "Tiger" Teague of College Station, Texas. It was widely discussed, both during committee hearings and floor debates, that Congressman Teague wanted these changes because it would (1) allow him to help the defense industries located in Dallas and Tarrant Counties (General Dynamics, Chance Vaught, Bell Helicopter, etc.) and (2) allow him closer contact with the television markets of Dallas-Fort Worth, which would enhance his ability to raise campaign funds.

8. During the 1971 session of the Texas Legislature, I was a member of the Senate sub-committee on congressional redistricting. One of our first acts was to solicit the views of the congressional delegation regarding congressional redistricting lines to be drawn to facilitate the increase from 23 to 24 seats. The sub-committee, at the suggestion of the Governor and Lt. Governor, then traveled to Washington, D.C. to meet with the delegation and discuss the new plan with the entire delegation together, and later with each member of Congress separately. The result was that the final plan adopted largely followed the wishes of the congressional delegation (at least a majority thereof.)

9. In 1980, a similar plan was not followed because the Governor had his own congressional plan which was <u>not</u> favored by the congressional delegation. Thus, the regular session of 1981 did not pass a congressional redistricting plan, resulting in the Governor calling a special session to enact his plan. Over the objection of a majority of the congressional delegation, the Governor's plan was adopted by the special session, which plan was immediately challenged in federal court. The trial court held the Governor's plan to be unconstitutional, and adopted a plan more in line with the congressional delegation wishes.

10. Another important consideration which the Texas Senate recognized was to always seek to avoid "pairing" incumbent Congresspersons. Since Texas had added new seats in each of the last 5 census years (1950-1990), it was much easier to accomplish that objective after the "one person - one vote" doctrine was implemented.

11. The enactment of the Voting Rights Act, its subsequent amendments, as well as the litigation which followed from them, has caused the Texas Legislature to change the criteria it follows, especially as it applies to congressional redistricting. After the bruising battle in the Senate in 1981, both in the regular and special sessions, and the ensuing litigation in *Seamon v. Upham*, the subsequent amendments to the Voting Rights Act as well as political commitments made by both incumbent members of the Legislature and new candidates for the Legislature, made the possibility of the election of more minority congressmen both a legal and political necessity following the 1990 census. Thus, the 1991 regular session of the Legislature were able to create three new congressional districts where the minority communities could be very influential, if not controlling, where these minority communities exercised their collective strength in registering voters and turning out the vote for candidates who shared their views on the prevalent important political issues of the day. Indeed, the new Congressional plan in Dallas County closely resembled the plan ordered into effect by the United States Supreme Court in *Seamon v. Upham*. But this new approach permitted the Legislature to still give preference to the "protect the incumbent" and "don't pair incumbents" rules. Advanced technology and the increased use of computers allowed the Legislature to adopt a plan which respected all these considerations, originally devised by a majority of the congressional delegation, which contained exactly the same number of people in each of the 30 districts. Such exactness was not possible during the redistricting fights in which I

was involved in 1967, 1971 or 1981. Yet in 1991 a plan could be devised which honored all the rules laid down by both judicial decisions and congressional enactment, and still result in each district having exactly the same population. It was, truly, an amazing piece of work.

12. The shapes of some of the districts is not a new thing in congressional redistricting. In 1967, when the new districts were drawn, the 6th congressional district was the subject of great derision during floor debate. A close colleague and fellow member, Babe Schwartz of Galveston, remarked during the discussion that if you were to drive down Interstate 45 from the northern border of C.D. 6 in southern DallasTarrant counties to the southern border of the district in the northern suburbs of Harris County, with all doors opened "you'd kill most of the voters in the district." It is there that the quip originated first, ultimately to be noted by the Supreme Court in its *Shaw v. Reno* decision. The new configuration of C.D. 6 covered the two most expensive television markets in Texas (Dallas-Fort Worth and Houston) which markedly increased the cost of campaigning in the district, but it honored the two unwritten rules: (1) protect the incumbent and (2) don't pair incumbents.

13. Campaigns for Congress today are much more expensive then they were in 1967. Not just the television expense, but all other forms of campaigning (direct mail, radio, yard signs, telephone banks) have become much more expensive in the last 25 years. This added expense when coupled with the decline in political party loyalty and the increase in "independent/split ticket" voters has also re-enforced the "protect the incumbent" mentality, both by members of the Legislature and the groups which traditionally contribute to congressional candidates of both parties.

14. I have always believed that the purpose of redistricting every 10 years was to increase the ability of the average voters to make an informed judgment as to which candidate most closely shares the same general goals and values as the voter. Thus, voters can compare the positions taken by opposing candidates on the major issues effecting the voters of the district, both individually and collectively; all within the confines of the rule of "one person/one vote".

15. However, in Texas, incumbency protection has always been a major, if not the major, factor in congressional redistricting. As evidenced by the Teague 6th Congressional District example, compactness has not been of significant value historically. The "one person one vote" concept was the first complication for the "incumbency protection" focus of the Legislature. The Voting Rights Act further complicated the "incumbency protection" principle in Texas. However, as evidenced by the recent Congressional districts, the Legislature has always found a way to protect incumbents while advancing the interests of state legislators who have U.S. Congressional ambitions. Although a well recognized and documented reality, at no time have these issues, specifically the concept of "incumbency protection," been discussed publicly by legislators.

16. Overall, I think the Legislature did as good a job as possible under the existing circumstances when it passed the Congressional Redistricting Act of 1991.

State's Exhibit 25

Affidavit of Lemuel Price
from *Vera v. Richards*, heard in the United States District Court for the Southern District of Texas

Dated June 21, 1994

BEFORE ME, the undersigned authority, on this day personally appeared LEMUEL PRICE, who upon his oath, did depose and state as follows:

1. My name is LEMUEL PRICE. I am over twenty-one (21) years of age and of sound mind and therefore state the following matters, of which I have personal knowledge, to be true and correct.

2. During the 72nd Texas legislative session, I was employed by Texas State Representative Jerald Larry, representing District 111, in Dallas County, Texas. One of my responsibilities was to actively participate in the redistricting process, including reapportionment of Congressional districts. Specifically, I was active in actually drawing districts in the State of Texas. As a result, I am intimately familiar with, and have personal knowledge of matters pertaining to the Congressional redistricting process in the State of Texas.

3. Appended hereto as Exhibit A is a true and correct copy of the State of Texas Congressional redistricting plan that I created in 1991. Pursuant to instructions from Representative Larry, my goal in this plan was to create three (3) predominately African-American Congressional districts; 18, 25, and 30. The plan was submitted to the Chair of the Redistricting Committee. Although this plan was not adopted by the Legislature, *in toto*, the current Districts 18 and 30 are very similar to those in Exhibit A.

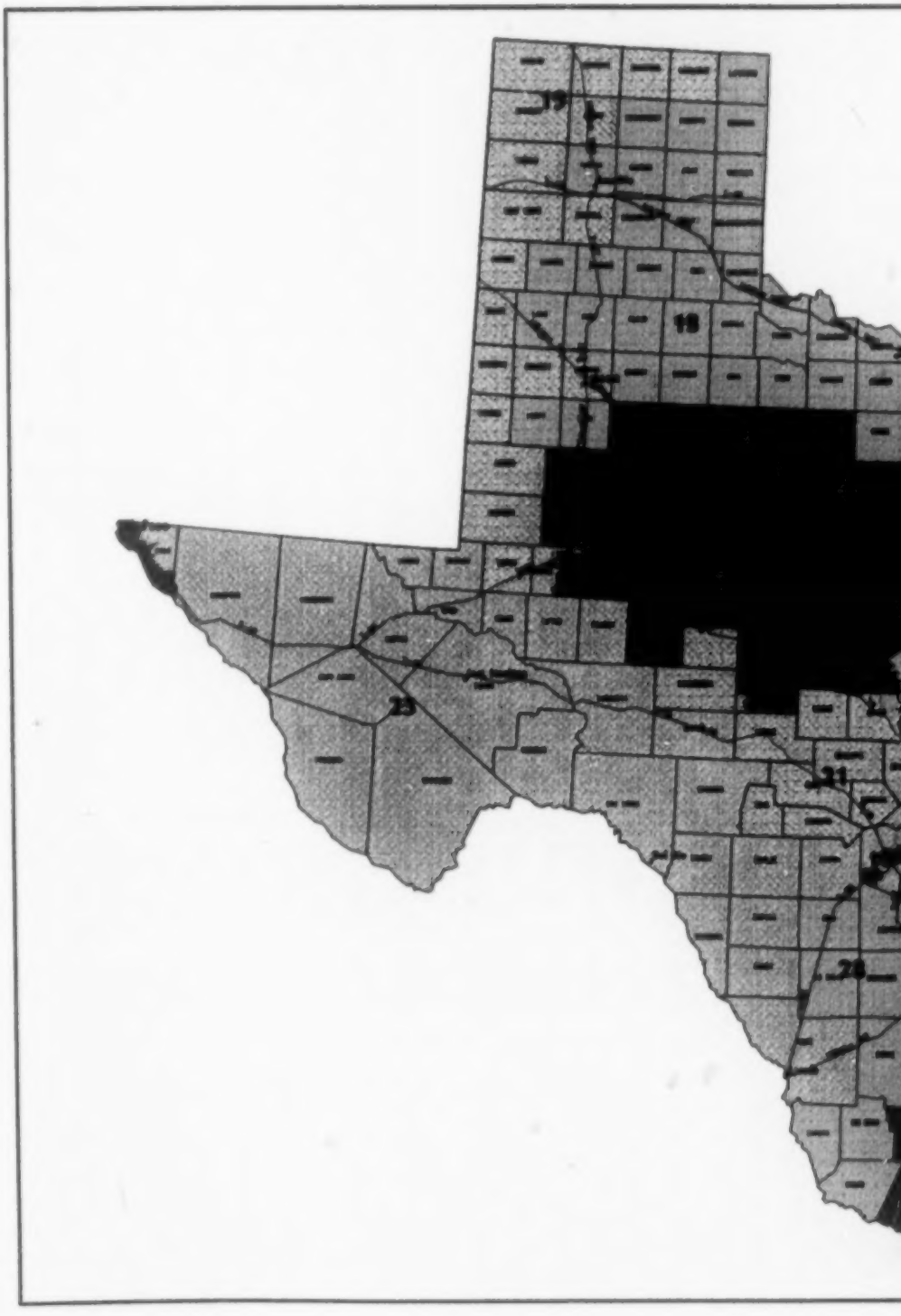
4. My proposed Congressional District 25 is an urban/rural district in southeast Texas. It traverses parts of the following fifteen (15) counties; Austin, Brazoria, Brazos, Burleson, Chambers, Colorado, Fort Bend, Galveston, Grimes, Harris, Jefferson, Milam, Waller, Washington, and Wharton. Beginning in Beaumont, the District drops to Port Arthur and follows major roads along the gulf coast through Chambers County to Galveston. The District then juts north to Houston and Harris County, drops south into Brazoria County, proceeds northwest through central Fort Bend County, into southeastern Waller County where the District expands to include southern Austin County into Colorado County and Wharton County. From Austin County and Waller County, the District proceeds north into eastern Washington County (rural), eastern into parts of Grimes County (rural), picking up southern Brazos County (rural), and then takes the eastern portions of Burleson County (rural) and Milam County (rural). The proposed District was 46.4% African-American.

5. Appended hereto as Exhibit B is a true and correct copy of the Plan Population Analysis with County Subtotals for the Congressional District plan reflected in Exhibit A.

6. Appended hereto as Exhibit C is a true and correct copy of the Harris County portion of the State of Texas Congressional redistricting plan that I created in 1991, Exhibit A.

7. Appended hereto as Exhibit D is a true and correct copy of the Dallas County portion of the State of Texas Congressional redistricting plan that I created in 1991, Exhibit A.

8. I have read the above and foregoing and state that I have personal knowledge of the facts related thereof.


19
18
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306
State's Exhibit 25
Attachment A

TEXAS
Proposed Congressional Districts
(L323C530)

LEGEND

Proposed Districts 99
County Boundaries

L323C530
08/30/91 13:15:39

TEXAS LEGISLATIVE COUNCIL

Scale 1 : 4823837
1 inch = 76.16 miles
August 04, 1993 7:38 AM

State's Exhibit 25/Attachment B
Population Analysis with County Subtotals

PAR200B — TEXAS LEGISLATIVE COUNCIL - PAR — 06/01/94
DATA: 1990 CENSUS — PLAN POPULATION ANALYSIS WITH COUNTY SUBTOTALS — 14:58:01
PLANID: L323C530 083091 13:15:59 — CONGRESSIONAL DISTRICTS — PAGE 1

COUNTY	POPULATION						% OF POPULATION				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
DISTRICT 001 TOTALS	566,217	85,744	16,294	101,526	459,764	4,927	15.1	2.9	17.9	81.2	0.9
BOWIE (100%)	81,665	17,798	1,334	19,031	61,964	670	21.8	1.6	23.3	75.9	0.8
CAMP (100%)	9,904	2,360	501	2,850	7,015	39	23.8	5.1	28.8	70.8	0.4
CASS (100%)	29,982	6,057	373	6,393	23,464	125	20.2	1.2	21.3	78.3	0.4
DELTA (100%)	4,857	404	67	467	4,344	46	8.3	1.4	9.6	89.4	0.9
FANNIN (100%)	24,804	1,633	485	2,108	22,466	230	6.6	2.0	8.5	90.6	0.9
FRANKLIN (100%)	7,802	349	357	706	7,040	56	4.5	4.6	9.0	90.2	0.7
GRAYSON (100%)	95,021	6,565	2,795	9,306	84,271	1,444	6.9	2.9	9.8	88.7	1.5

---------COUNTY----------	----------POPULATION----------						----------% OF POPULATION----------				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
HARRISON (100%)	57,483	16,038	1,278	17,238	39,907	338	27.9	2.2	30.0	69.4	0.6
HOPKINS (100%)	28,833	2,476	1,407	3,876	24,755	202	8.6	4.9	13.4	85.9	0.7
HUNT (82%)	52,942	6,670	2,420	9,031	43,384	527	12.6	4.6	17.1	81.9	1.0
LAMAR (100%)	43,949	6,397	475	6,844	36,546	559	14.6	1.1	15.6	83.2	1.3
MARION (100%)	9,984	3,100	147	3,240	6,696	48	31.0	1.5	32.5	67.1	0.5
MORRIS (100%)	13,200	3,227	239	3,459	9,660	81	24.4	1.8	26.2	73.2	0.6
RAINS (100%)	6,715	286	158	442	6,234	39	4.3	2.4	6.6	92.8	0.6
RED RIVER (100%)	14,317	2,872	273	3,130	11,107	80	20.1	1.9	21.9	77.6	0.6
TITUS (100%)	24,009	3,229	2,556	5,744	18,128	137	13.4	10.6	23.9	75.5	0.6
UPSHUR (100%)	31,370	3,881	641	4,499	26,714	157	12.4	2.0	14.3	85.2	0.5
WOOD (100%)	29,380	2,402	788	3,162	26,069	149	8.2	2.7	10.8	88.7	0.5
DISTRICT 002 TOTALS	566,217	98,734	33,147	130,946	431,055	4,216	17.4	5.9	23.1	76.1	0.7
ANDERSON (100%)	48,024	11,143	3,953	15,044	32,665	315	23.2	8.2	31.3	68.0	0.7
ANGELINA (100%)	69,884	10,731	6,072	16,623	52,777	484	15.4	8.7	23.8	75.5	0.7
CHEROKEE (58%)	23,946	5,562	1,739	7,245	16,500	201	23.2	7.3	30.3	68.9	0.8

COUNTY	POPULATION						% OF POPULATION				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
HOUSTON (100%)	21,375	6,326	965	7,237	14,042	96	29.6	4.5	33.9	65.7	0.4
JASPER (100%)	31,102	5,868	594	6,446	24,529	127	18.9	1.9	20.7	78.9	0.4
MONTGOMERY (38%)	69,019	4,172	6,398	10,526	57,954	539	6.0	9.3	15.3	84.0	0.8
NACOGDOCHES (100%)	54,753	9,020	2,788	11,736	42,575	442	16.5	5.1	21.4	77.8	0.8
NEWTON (100%)	13,569	3,039	153	3,180	10,329	60	22.4	1.1	23.4	76.1	0.4
ORANGE (47%)	37,770	6,138	843	6,951	30,491	328	16.3	2.2	18.4	80.7	0.9
PANOLA (100%)	22,035	4,057	477	4,519	17,429	87	18.4	2.2	20.5	79.1	0.4
POLK (100%)	30,687	3,896	1,610	5,458	24,531	698	12.7	5.2	17.8	79.9	2.3
RUSK (33%)	14,626	3,425	685	4,086	10,494	46	23.4	4.7	27.9	71.7	0.3
SABINE (100%)	9,586	1,117	111	1,220	8,339	27	11.7	1.2	12.7	87.0	0.0
SAN AUGUSTINE (100%)	7,999	2,244	138	2,374	5,607	18	28.1	1.7	29.7	70.1	0.2
SAN JACINTO (100%)	16,372	2,544	431	2,965	13,319	88	15.5	2.6	18.1	81.4	0.5
SHELBY (100%)	22,034	4,727	539	5,249	16,719	66	21.5	2.4	23.8	75.9	0.3
TRINITY (100%)	11,445	1,645	272	1,914	9,485	46	14.4	2.4	16.7	82.9	0.4
TYLER (100%)	16,646	1,994	177	2,163	14,426	57	12.0	1.1	13.0	86.7	0.3
WALKER (89%)	45,345	11,086	5,202	16,010	28,844	491	24.4	11.5	35.3	63.6	1.1

COUNTY	POPULATION						% OF POPULATION				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
DISTRICT 003 TOTALS	566,217	19,601	32,876	52,134	494,925	19,158	3.5	5.8	9.2	87.4	3.4
COLLIN (97%)	256,986	9,527	15,462	24,837	223,810	8,339	3.7	6.0	9.7	87.1	3.2
DALLAS (15%)	270,167	8,537	14,378	22,766	237,477	9,924	3.2	5.3	8.4	87.9	3.7
DENTON (14%)	39,064	1,537	3,036	4,531	33,638	895	3.9	7.8	11.6	86.1	2.3
DISTRICT 004 TOTALS	566,217	54,969	30,789	85,277	470,189	10,751	9.7	5.4	15.1	83.0	1.9
CHEROKEE (42%)	17,103	1,369	958	2,310	14,701	92	8.0	5.6	13.5	86.0	0.5
DALLAS (11%)	208,334	13,662	16,643	30,081	170,382	7,871	6.6	8.0	14.4	81.8	3.8
GREGG (100%)	104,948	19,937	3,775	23,610	80,358	980	19.0	3.6	22.5	76.6	0.9
HENDERSON (3%)	1,786	10	37	47	1,732	7	0.6	2.1	2.6	97.0	0.4
HUNT (18%)	11,401	132	456	581	10,734	86	1.2	4.0	5.1	94.1	0.8
KAUFMAN (34%)	17,581	1,225	1,065	2,269	15,140	172	7.0	6.1	12.9	86.1	1.0
ROCKWALL (100%)	25,604	855	1,500	2,351	22,981	272	3.3	5.9	9.2	89.8	1.1
RUSK (67%)	29,109	5,559	1,051	6,574	22,405	130	19.1	3.6	22.6	77.0	0.4
SMITH (75%)	114,068	11,045	3,849	14,824	98,287	957	9.7	3.4	13.0	86.2	0.8
VAN ZANDT (96%)	36,283	1,175	1,455	2,630	33,469	184	3.2	4.0	7.2	92.2	0.5

---------COUNTY----------	----------POPULATION----------						----------% OF POPULATION----------				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
DISTRICT 005TOTALS	566,217	93,603	100,229	191,739	363,651	10,827	16.5	17.7	33.9	64.2	1.9
BRAZOS (34%)	41,151	9,951	9,825	19,579	21,232	340	24.2	23.9	47.6	51.6	0.8
DALLAS (16%)	299,917	32,998	73,500	105,053	185,797	9,067	11.0	24.5	35.0	61.9	3.0
FREESTONE (100%)	15,818	3,013	619	3,618	12,124	76	19.0	3.9	22.9	76.6	0.5
HENDERSON (97%)	56,757	4,745	2,331	7,048	49,403	306	8.4	4.1	12.4	87.0	0.5
KAUFMAN (66%)	34,639	6,070	2,275	8,304	26,085	250	17.5	6.6	24.0	75.3	0.7
LEON (100%)	12,665	1,615	509	2,110	10,507	48	12.8	4.0	16.7	83.0	0.4
MADISON (100%)	10,931	2,575	1,178	3,725	7,127	79	23.6	10.8	34.1	65.2	0.7
NAVARRO (100%)	39,926	7,574	2,891	10,414	29,120	392	19.0	7.2	26.1	72.9	1.0
ROBERTSON (100%)	15,511	4,259	1,904	6,101	9,373	37	27.5	12.3	39.3	60.4	0.2
SMITH (25%)	37,241	20,527	5,137	25,451	11,566	224	55.1	13.8	68.3	31.1	0.6
VAN ZANDT (4%)	1,661	276	60	336	1,317	8	16.6	3.6	20.2	79.3	0.5

---------COUNTY----------	----------POPULATION----------						----------% OF POPULATION----------				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
DISTRICT 006 TOTAL	566,217	25,801	32,727	58,092	494,001	14,124	4.6	5.8	10.3	87.2	2.5
DALLAS (0%)	5,851	211	298	506	5,167	178	3.6	5.1	8.6	88.3	3.0
ELLIS (52%)	44,004	1,586	4,339	5,901	37,736	367	3.6	9.9	13.4	85.8	0.8
JOHNSON (35%)	33,751	362	2,201	2,558	30,811	382	1.1	6.5	7.6	91.3	1.1
PARKER (61%)	39,202	426	1,444	1,852	36,958	392	1.1	3.7	4.7	94.3	1.0
TARRANT (38%)	443,409	23,216	24,445	47,275	383,329	12,805	5.2	5.5	10.7	86.5	2.9
DISTRICT 007 TOTALS	566,217	32,666	57,634	89,358	428,102	48,757	5.8	10.2	15.8	75.6	8.6
FORT BEND (50%)	112,907	7,758	11,710	19,322	81,366	12,219	6.9	10.4	17.1	72.1	10.8
HARRIS (16%)	453,310	24,908	45,924	70,036	346,736	36,538	5.5	10.1	15.4	76.5	8.1
DISTRICT 008 TOTALS	566,217	33,856	56,184	89,398	453,563	23,256	6.0	9.9	15.8	80.1	4.1
BRAZOS (65%)	79,440	3,557	6,672	10,163	65,017	4,260	4.5	8.4	12.8	81.8	5.4
GRIMES (42%)	7,833	583	452	1,034	6,763	36	7.4	5.8	13.2	86.3	0.5
HARRIS (13%)	364,655	24,810	42,139	66,440	280,533	17,682	6.8	11.6	18.2	76.9	4.8
MONTGOMERY (57%)	103,317	3,499	6,191	9,636	92,450	1,231	3.4	6.0	9.3	89.5	1.2
WALKER (11%)	5,572	1,248	291	1,533	4,012	27	22.4	5.2	27.5	72.0	0.5

---------COUNTY----------	----------POPULATION----------						----------% OF POPULATION----------				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
WALLER (23%)	5,400	159	439	592	4,788	20	2.9	8.1	11.0	88.7	0.4
DISTRICT 009 TOTALS	566,217	43,328	46,134	88,772	468,092	9,353	7.7	8.1	15.7	82.7	1.7
BRAZORIA (3%)	5,695	113	818	931	4,700	64	2.0	14.4	16.3	82.5	1.1
CHAMBERS (99%)	19,895	2,550	1,151	3,691	16,025	179	12.8	5.8	18.6	80.5	0.9
GALVESTON (52%)	134,786	4,908	14,273	19,069	112,600	3,117	3.6	10.6	14.1	83.5	2.3
HARDIN (100%)	41,320	3,485	679	4,138	37,006	176	8.4	1.6	10.0	89.6	0.4
DISTRICT 009 - CONTINUED											
HARRIS (4%)	123,290	14,506	18,374	32,529	87,912	2,849	11.8	14.9	26.4	71.3	2.3
JEFFERSON (61%)	145,766	10,225	6,869	16,997	126,499	2,270	7.0	4.7	11.7	86.8	1.6
LIBERTY (100%)	52,726	6,911	2,880	9,701	42,699	326	13.1	5.5	18.4	81.0	0.6
ORANGE	42,739	630	1,090	1,716	40,651	372	1.5	2.6	4.0	95.1	0.9
DISTRICT 010 TOTALS	566,217	63,145	121,271	182,246	365,616	18,355	11.2	21.4	32.2	64.6	3.2
TRAVIS (98%)	566,217	63,145	12,1271	182,246	365,616	18,355	11.2	21.4	32.2	64.6	3.2

---------COUNTY----------	----------POPULATION----------						----------% OF POPULATION----------				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
DISTRICT 011 TOTALS	566,217	93,268	71,224	162,330	394,154	9,733	16.5	12.6	28.7	69.6	1.7
BELL (59%)	113,266	30,096	17,084	46,220	62,618	4,428	26.6	15.1	40.8	55.3	3.9
BOSQUE (100%)	15,125	319	1,430	1,742	13,320	63	2.1	9.5	11.5	88.1	0.4
BURLESON (64%)	8,786	1,016	921	1,931	6,817	38	11.6	10.5	22.0	77.6	0.4
BURNET (74%)	16,851	159	1,471	1,622	15,095	134	0.9	8.7	9.6	89.6	0.8
CORYELL (100%)	64,213	13,592	6,243	19,536	42,681	1,996	21.2	9.7	30.4	66.5	3.1
FALLS (100%)	17,712	4,810	2,072	6,804	10,843	65	27.2	11.7	38.4	61.2	0.4
HAMILTON (100%)	7,733	2	403	405	7,284	44	0.0	5.2	5.2	94.2	0.6
LAMPASAS (100%)	13,521	268	1,753	1,994	11,321	206	2.0	13.0	14.7	83.7	1.5
LEE (100%)	12,854	1,780	1,410	3,162	9,650	42	13.8	11.0	24.6	75.1	0.3
LIMESTONE (100%)	20,946	4,156	1,459	5,586	15,239	121	19.8	7.0	26.7	72.8	0.6
LLANO (11%)	1,315	0	19	19	1,293	3	0.0	1.4	1.4	98.3	0.2
MCLENNAN (100%)	189,123	29,520	23,643	52,679	134,507	1,937	15.6	12.5	27.9	71.1	1.0
MILAM (77%)	17,596	1,469	2,393	3,831	13,711	54	8.3	13.6	21.8	77.9	0.3
WASHINGTON (71%)	18,553	2,246	822	3,052	15,281	220	12.1	4.4	16.5	82.4	1.2
WILLIAMSON (35%)	48,623	3,835	10,101	13,747	34,494	382	7.9	20.8	28.3	70.9	0.8

---------COUNTY----------	----------POPULATION----------						----------% OF POPULATION----------				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
DISTRICT 012 TOTALS	566,217	40,896	85,135	125,127	427,670	13,420	7.2	15.0	22.1	75.5	2.4
DENTON (20%)	53,808	5,368	5,250	10,515	41,499	1,794	10.0	9.8	19.5	77.1	3.3
JOHNSON (65%)	63,414	2,159	5,256	7,348	55,623	443	3.4	8.3	11.6	87.7	0.7
PARKER (39%)	25,583	163	1,253	1,415	23,992	176	0.6	4.9	5.5	93.8	0.7
SOMERVELL (100%)	5,360	10	749	759	4,547	54	0.2	14.0	14.2	84.8	1.0
TARRANT (33%)	383,373	32,806	69,964	102,040	270,669	10,664	8.6	18.2	26.6	70.6	2.8
WISE (100%)	34,679	390	2,663	3,050	31,340	289	1.1	7.7	8.8	90.4	0.8
DISTRICT 013 TOTALS	566,217	41,687	116,161	156,807	400,552	8,858	7.4	20.5	27.7	70.7	1.6
ARCHER (100%)	7,973	11	189	200	7,733	40	0.1	2.4	2.5	97.0	0.5
ARMSTRONG (100%)	2,021	0	55	55	1,951	15	0.0	2.7	2.7	96.5	0.7
BAYLOR (100%)	4,385	180	334	514	3,848	23	4.1	7.6	11.7	87.8	0.5
BRISCOE (100%)	1,971	68	367	435	1,532	4	3.5	18.6	22.1	77.7	0.2
CARSON (100%)	6,576	11	354	365	6,158	53	0.2	5.4	5.6	93.6	0.8
CASTRO (100%)	9,070	261	4,187	4,446	4,574	50	2.9	46.2	49.0	50.4	0.6
CHILDRESS (100%)	5,953	321	853	1,171	4,736	46	5.4	14.3	19.7	79.6	0.8
CLAY (100%)	10,024	33	242	275	9,642	107	0.3	2.4	2.7	96.2	1.1

COUNTY	POPULATION						% OF POPULATION				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
COLLINGSWORTH (100%)	3,573	230	561	788	2,750	35	6.4	15.7	22.1	77.0	1.0
COTTLE (100%)	2,247	199	367	563	1,676	8	8.9	16.3	25.1	74.6	0.4
CROSBY (100%)	7,304	321	3,111	3,408	3,869	27	4.4	42.6	46.7	53.0	0.4
DICKENS (100%)	2,571	113	479	590	1,964	17	4.4	18.6	22.9	76.4	0.7
DONLEY (100%)	3,696	127	139	266	3,415	15	3.4	3.8	7.2	92.4	0.4
FLOYD (100%)	8,497	320	3,381	3,694	4,759	44	3.8	39.8	43.5	56.0	0.5
FOARD (100%)	1,794	88	233	306	1,478	10	4.9	13.0	17.1	82.4	0.6
GRAY (100%)	23,967	899	1,895	2,777	20,841	349	3.8	7.9	11.6	87.0	1.5
HALE (100%)	34,671	1,852	14,428	16,194	18,181	296	5.3	41.6	46.7	52.4	0.9
HALL (100%)	3,905	303	727	1,028	2,850	27	7.8	18.6	26.3	73.0	0.7
HARDEMAN (100%)	5,283	321	589	907	4,331	45	6.1	11.1	17.2	82.0	0.9
HEMPHILL (100%)	3,720	7	412	419	3,275	26	0.2	11.1	11.3	88.0	0.7
HUTCHINSON (100%)	25,689	677	2,509	3,170	22,098	421	2.6	9.8	12.3	86.0	1.6
KING (100%)	354	0	53	53	301	0	0.0	15.0	15.0	85.0	0.0
KNOX (100%)	4,837	338	1,088	1,423	3,396	18	7.0	22.5	29.4	70.2	0.4

COUNTY	POPULATION						% OF POPULATION				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
LAMB (100%)	15,072	822	5,509	6,303	8,700	69	5.5	36.6	41.8	57.7	0.5
LIPSCOMB (100%)	3,143	1	379	380	2,723	40	0.0	12.1	12.1	86.6	1.3
LUBBOCK (27%)	60,603	11,434	28,965	40,071	20,074	458	18.9	47.8	66.1	33.1	0.8
LYNN (100%)	6,758	223	2,819	3,041	3,683	34	3.3	41.7	45.0	54.5	0.5
MONTAGUE (100%)	17,274	5	548	552	16,632	90	0.0	3.2	3.2	96.3	0.5
MOTLEY (100%)	1,532	68	136	204	1,319	9	4.4	8.9	13.3	86.1	0.6
POTTER (100%)	97,874	8,673	19,246	27,706	66,877	3,291	8.9	19.7	28.3	68.3	3.4
ROBERTS (100%)	1,025	0	34	34	988	3	0.0	3.3	3.3	96.4	0.3
SWISHER (100%)	8,133	340	2,496	2,828	5,254	51	4.2	30.7	34.8	64.6	0.6
TERRY (100%)	13,218	449	5,194	5,632	7,486	100	3.4	39.3	42.6	56.6	0.8
WHEELER (100%)	5,879	154	378	523	5,297	59	2.6	6.4	8.9	90.1	1.0
WICHITA (100%)	122,378	11,221	10,555	21,541	98,127	2,710	9.2	8.6	17.6	80.2	2.2
WILBARGER (100%)	15,121	1,349	2,185	3,521	11,437	163	8.9	14.5	23.3	75.6	1.1
YOUNG (100%)	18,126	268	1,164	1,424	16,597	105	1.5	6.4	7.9	91.6	0.6

COUNTY	POPULATION						% OF POPULATION				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
DISTRICT 014 TOTALS	566,217	45,122	131,595	175,209	384,762	6,246	8.0	23.2	30.9	68.0	1.1
ARANSAS (100%)	17,892	319	3,588	3,889	13,306	697	1.8	20.1	21.7	74.4	3.9
AUSTIN (59%)	11,797	1,258	701	1,944	9,811	42	10.7	5.9	16.5	83.2	0.4
BASTROP (100%)	38,263	4,512	6,933	11,284	26,665	314	11.8	18.1	29.5	69.7	0.8
BRAZORIA (71%)	136,636	11,140	22,603	33,411	101,431	1,794	8.2	16.5	24.5	74.2	1.3
CALDWELL (100%)	26,392	2,825	9,988	12,663	13,547	182	10.7	37.8	48.0	51.3	0.7
CALHOUN (100%)	19,053	556	6,893	7,435	11,021	597	2.9	36.2	39.0	57.8	3.1
COLORADO (76%)	13,980	1,762	1,274	3,006	10,929	45	12.6	9.1	21.5	78.2	0.3
FAYETTE (100%)	20,095	1,686	1,702	3,364	16,678	53	8.4	8.5	16.7	83.0	0.3
FORT BEND (13%)	29,980	1,819	5,696	7,500	22,232	248	6.1	19.0	25.0	74.2	0.8
GONZALES (100%)	17,205	1,716	6,142	7,723	9,398	84	10.0	35.7	44.9	54.6	0.5
HAYS (93%)	61,179	2,203	17,772	19,852	40,754	573	3.6	29.0	32.4	66.6	0.9
JACKSON (100%)	13,039	1,218	2,772	3,967	9,047	25	9.3	21.3	30.4	69.4	0.2
LAVACA (100%)	18,690	1,342	1,596	2,912	15,716	62	7.2	8.5	15.6	84.1	0.3
MATAGORDA (100%)	36,928	5,106	9,088	14,118	21,878	932	13.8	24.6	38.2	59.2	2.5
REFUGIO (100%)	7,976	645	3,164	3,772	4,181	23	8.1	39.7	47.3	52.4	0.3

---------COUNTY----------	----------POPULATION----------						----------% OF POPULATION----------				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
VICTORIA (89%)	66,385	4,789	24,143	28,671	37,241	473	7.2	36.4	43.2	56.1	0.7
WHARTON (77%)	30,727	2,226	7,540	9,698	20,927	102	7.2	24.5	31.6	68.1	0.3
DISTRICT 015 TOTALS	566,217	6,049	419,367	424,743	138,252	3,222	1.1	74.1	75.0	24.4	0.6
BEE (100%)	25,135	727	12,909	13,599	11,211	325	2.9	51.4	54.1	44.6	1.3
BROOKS (100%)	8,204	3	7,338	7,340	824	40	0.0	89.4	89.5	10.0	0.5
DE WITT (100%)	18,840	2,114	4,567	6,523	12,265	52	11.2	24.2	34.6	65.1	0.3
GOLIAD (100%)	5,980	407	2,145	2,532	3,420	28	6.8	35.9	42.3	57.2	0.5
HIDALGO (100%)	383,545	806	326,972	327,490	54,259	1,796	0.2	85.2	85.4	14.1	0.5
JIM WELLS (29%)	10,863	51	5,830	5,876	4,945	42	0.5	53.7	54.1	45.5	0.4
KARNES (31%)	3,882	13	1,153	1,166	2,705	11	0.3	29.7	30.0	69.7	0.3
KLEBERG (64%)	19,349	759	11,990	12,710	6,275	364	3.9	62.0	65.7	32.4	1.9
LIVE OAK (100%)	9,556	10	3,324	3,327	6,158	71	0.1	34.8	34.8	64.4	0.7
SAN PATRICIO (100%)	58,749	968	29,809	30,672	27,669	408	1.6	50.7	52.2	47.1	0.7
VICTORIA (11%)	7,976	117	1,229	1,339	6,594	43	1.5	15.4	16.8	82.7	0.5
WILLACY (80%)	14,138	74	12,101	12,169	1,927	42	0.5	85.6	86.1	13.6	0.3

COUNTY	POPULATION						% OF POPULATION				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
DISTRICT 016 TOTALS	566,217	20,272	398,384	417,172	141,546	7,499	3.6	70.4	73.7	25.0	1.3
EL PASO (96%)	566,217	20,272	398,384	417,172	141,546	7,499	3.6	70.4	73.7	25.0	1.3
DISTRICT 017 TOTALS	566,217	20,597	102,362	122,328	438,611	5,278	3.6	18.1	21.6	77.5	0.9
BORDEN (100%)	799	2	120	120	669	10	0.3	15.0	15.0	83.7	1.3
BROWN (100%)	34,371	1,552	3,799	5,329	28,814	228	4.5	11.1	15.5	83.8	0.7
CALLAHAN (100%)	11,859	2	489	491	11,289	79	0.0	4.1	4.1	95.2	0.7
COKE (100%)	3,424	6	422	426	2,977	21	0.2	12.3	12.4	86.9	0.6
COLEMAN (100%)	9,710	246	1,139	1,383	8,288	39	2.5	11.7	14.2	85.4	0.4
COMANCHE (100%)	13,381	16	2,205	2,215	11,109	57	0.1	16.5	16.6	83.0	0.4
CONCHO (100%)	3,044	16	1,194	1,208	1,827	9	0.5	39.2	39.7	60.0	0.3
DAWSON (100%)	14,349	622	6,120	6,728	7,569	52	4.3	42.7	46.9	52.7	0.4
EASTLAND (100%)	18,488	397	1,404	1,799	16,605	84	2.1	7.6	9.7	89.8	0.5
ERATH (100%)	27,991	195	2,458	2,650	25,123	218	0.7	8.8	9.5	89.8	0.8

---------COUNTY----------	----------POPULATION----------						----------% OF POPULATION----------				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
FISHER (100%)	4,842	190	997	1,183	3,652	7	3.9	20.6	24.4	75.4	0.1
GARZA (100%)	5,143	328	1,454	1,760	3,354	29	6.4	28.3	34.2	65.2	0.6
GLASSCOCK (100%)	1,447	0	424	424	1,018	5	0.0	29.3	29.3	70.4	0.3
HASKELL (100%)	6,820	244	1,312	1,551	5,229	40	3.6	19.2	22.7	76.7	0.6
HOOD (100%)	28,981	52	1,353	1,405	27,251	325	0.2	4.7	4.8	94.0	1.1
HOWARD (100%)	32,343	1,225	8,607	9,781	22,226	336	3.8	26.6	30.2	68.7	1.0
IRION (100%)	1,629	2	385	387	1,240	2	0.1	23.6	23.8	76.1	0.1
JACK (100%)	6,981	51	232	283	6,668	30	0.7	3.3	4.1	95.5	0.4
JONES (100%)	16,490	666	2,786	3,437	12,970	83	4.0	16.9	20.8	78.7	0.5
KENT (100%)	1,010	6	120	126	883	1	0.6	11.9	12.5	87.4	0.1
MCCULLOCH (100%)	8,778	166	2,317	2,468	6,289	21	1.9	26.4	28.1	71.6	0.2
MARTIN (100%)	4,956	89	1,960	2,047	2,881	28	1.8	39.5	41.3	58.1	0.6
MENARD (97%)	2,194	7	706	713	1,473	8	0.3	32.2	32.5	67.1	0.4
MIDLAND (0%)	443	7	45	52	386	5	1.6	10.2	11.7	87.1	1.1
MILLS (100%)	4,531	10	484	494	4,029	8	0.2	10.7	10.9	88.9	0.2

COUNTY	POPULATION						% OF POPULATION				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
MITCHELL (100%)	8,016	363	2,389	2,751	5,241	24	4.5	29.8	34.3	65.4	0.3
NOLAN (100%)	16,594	775	4,246	4,978	11,524	92	4.7	25.6	30.0	69.4	0.6
PALO PINTO (100%)	25,055	792	2,301	3,084	21,707	264	3.2	9.2	12.3	86.6	1.1
RUNNELS (100%)	11,294	183	2,740	2,921	8,340	33	1.6	24.3	25.9	73.8	0.3
SAN SABA (100%)	5,401	14	998	1,011	4,373	17	0.3	18.5	18.7	81.0	0.3
SCURRY (100%)	18,634	879	4,454	5,320	13,214	100	4.7	23.9	28.5	70.9	0.5
SHACKELFORD (100%)	3,316	12	272	284	3,016	16	0.4	8.2	8.6	91.0	0.5
STEPHENS (100%)	9,010	252	767	1,001	7,950	59	2.8	8.5	11.1	88.2	0.7
STERLING (100%)	1,438	0	366	366	1,067	5	0.0	25.5	25.5	74.2	0.3
STONEWALL (100%)	2,013	89	237	325	1,677	11	4.4	11.8	16.1	83.3	0.5
TAYLOR (100%)	119,655	7,547	17,511	24,847	92,955	1,853	6.3	14.6	20.8	77.7	1.5
THROCKMORTON (100%)	1,880	0	136	136	1,732	12	0.0	7.2	7.2	92.1	0.6
TOM GREEN (81%)	79,907	3,594	23,413	26,844	51,996	1,067	4.5	29.3	33.6	65.1	1.3
DISTRICT 018 TOTALS	566,217	285,200	97,511	378,186	170,277	17,754	50.4	17.2	66.8	30.1	3.1
HARRIS (20%)	566,217	285,200	97,511	378,186	170,277	17,754	50.4	17.2	66.8	30.1	3.1

COUNTY	POPULATION						% OF POPULATION				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
DISTRICT 019 TOTALS	566,217	13,737	102,237	11,5507	442,962	7,748	2.4	18.1	20.4	78.2	1.4
ANDREWS (100%)	14,338	274	4,552	4,811	9,281	246	1.9	31.7	33.6	64.7	1.7
BAILEY (100%)	7,064	124	2,740	2,857	4,184	23	1.8	38.8	40.4	69.2	0.3
COCHRAN (100%)	4,377	234	1,857	2,087	2,275	15	5.3	42.4	47.7	52.0	0.3
DALLAM (100%)	5,461	112	1,151	1,253	4,157	51	2.1	21.1	22.9	76.1	0.9
DEAF SMITH (100%)	19,153	307	9,356	9,643	9,417	93	1.6	48.8	50.3	49.2	0.5
ECTOR (71%)	84,590	1,880	16,129	17,940	65,612	1,038	2.2	19.1	21.2	77.6	1.2
GAINES (100%)	14,123	334	4,608	4,932	9,096	95	2.4	32.6	34.9	64.4	0.7
HANSFORD (100%)	5,848	0	1,174	1,174	4,637	37	0.0	20.1	20.1	79.3	0.6
HARTLEY (100%)	3,634	9	201	210	3,388	36	0.2	5.5	5.8	93.2	1.0
HOCKLEY (100%)	24,199	1,023	7,654	8,651	15,410	138	4.2	31.6	35.7	63.7	0.6
LUBBOCK (73%)	162,033	5,720	22,046	27,586	131,340	3,107	3.5	13.6	17.0	81.1	1.9
MIDLAND (76%)	80,946	2,286	9,240	11,460	68,357	1,129	2.8	11.4	14.2	84.4	1.4
MOORE (100%)	17,865	95	5,693	5,772	11,707	386	0.5	31.9	32.3	65.5	2.2
OCHILTREE (100%)	9,128	2	1,641	1,643	7,373	112	0.0	18.0	18.0	80.8	1.2
OLDHAM (100%)	2,278	9	200	209	2,020	49	0.4	8.8	9.2	88.7	2.2

COUNTY	POPULATION						% OF POPULATION				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
PARMER (100%)	9,863	123	4,096	4,209	5,600	54	1.2	41.5	42.7	56.8	0.5
RANDALL (100%)	89,673	1,115	6,144	7,226	81,364	1,083	1.2	6.9	8.1	90.7	1.2
SHERMAN (100%)	2,858	4	538	542	2,302	14	0.1	18.8	19.0	80.5	0.5
YOAKUM (100%)	8,786	86	3,217	3,302	5,442	42	1.0	36.6	37.6	61.9	0.5
DISTRICT 020 TOTALS	566,217	30,927	344,215	373,488	183,528	9,201	5.5	60.8	66.0	32.4	1.6
BEXAR (48%)	566,217	30,927	344,215	373,488	183,528	9,201	5.5	60.8	66.0	32.4	1.6
DISTRICT 021 TOTALS	566,217	18,900	80,978	99,146	458,553	8,518	3.3	14.3	17.5	81.0	1.5
BANDERA (100%)	10,562	23	1,172	1,195	9,276	91	0.2	11.1	11.3	87.8	0.9
BELL (41%)	77,822	5,999	7,911	13,572	62,290	1,780	7.7	10.2	17.7	80.0	2.3
BLANCO (100%)	5,972	56	840	896	5,038	38	0.9	14.1	15.0	84.4	0.6
BURNET (26%)	5,826	10	969	1,073	4,719	34	1.9	16.6	18.4	81.0	0.6
COMAL (78%)	40,451	205	4,616	4,813	35,405	233	0.5	11.4	11.9	87.5	0.6
GILLESPIE (100%)	17,204	34	2,426	2,455	14,676	73	0.2	14.1	14.3	85.3	0.4
GUADALUPE (69%)	44,685	1,835	10,560	12,302	31,837	546	4.1	23.6	27.5	71.2	1.2

---------COUNTY----------	----------POPULATION----------						----------% OF POPULATION----------				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
HAYS (7%)	4,435	17	477	488	3,907	40	0.4	10.8	11.0	88.1	0.9
KENDALL (100%)	14,589	58	2,392	2,441	12,052	96	0.4	16.4	16.7	82.6	0.7
KERR (100%)	36,304	805	5,994	6,746	29,303	255	2.2	16.5	18.6	80.7	0.7
KIMBLE (100%)	4,122	2	772	774	3,330	18	0.0	18.7	18.8	80.8	0.4
LLANO (89%)	10,316	22	434	456	9,805	55	0.2	4.2	4.4	95.0	0.5
MASON (100%)	3,423	6	671	677	2,734	12	0.2	19.6	19.8	79.9	0.4
MENARD (3%)	58	0	20	20	38	0	0.0	34.5	34.5	65.5	0.0
REAL (100%)	2,412	0	574	574	1,814	24	0.0	23.8	23.8	75.2	1.0
SCHLEICHER (100%)	2,990	27	1,062	1,086	1,898	6	0.9	35.5	36.3	63.5	0.2
TOM GREEN (19%)	18,551	542	2,088	2,612	15,646	293	2.9	11.3	14.1	84.3	1.6
TRAVIS (2%)	10,190	28	418	441	9,663	86	0.3	4.1	4.3	94.8	0.8
WILLIAMSON (65%)	90,928	3,026	9,903	12,794	76,230	1,904	3.3	10.9	14.1	83.8	2.1

COUNTY	POPULATION						% OF POPULATION				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
DISTRICT 022 TOTALS	566,217	25,127	64,486	89,009	459,510	17,698	4.4	11.4	15.7	81.2	3.1
BRAZORIA (17%)	33,207	992	5,529	6,501	25,938	768	3.0	16.7	19.6	78.1	2.3
HARRIS (19%)	523,145	24,043	58,309	81,774	424,540	16,831	4.6	11.1	15.6	81.2	3.2
MONTGOMERY (5%)	9,865	92	648	734	9,032	99	0.9	6.6	7.4	91.6	1.0
DISTRICT 023 TOTALS	566,217	16,484	354,149	369,803	190,341	6,073	2.9	62.5	65.3	33.6	1.1
BEXAR (8%)	95,091	1,943	19,331	21,199	71,866	2,026	2.0	20.3	22.3	75.6	2.1
BREWSTER (100%)	8,681	85	3,702	3,779	4,833	69	1.0	42.6	43.5	55.7	0.8
CRANE (100%)	4,652	130	1,577	1,705	2,920	27	2.8	33.9	36.7	62.8	0.6
CROCKETT (100%)	4,078	39	2,021	2,052	2,016	10	1.0	49.6	50.3	49.4	0.2
CULBERSON (100%)	3,407	2	2,419	2,421	950	36	0.1	71.0	71.1	27.9	1.1
DIMMIT (100%)	10,433	60	8,688	8,738	1,655	40	0.6	83.3	83.8	15.9	0.4
ECTOR (29%)	34,344	3,677	21,186	24,766	9,210	368	10.7	61.7	72.1	26.8	1.1
EDWARDS (100%)	2,266	0	1,182	1,182	1,076	8	0.0	52.2	52.2	47.5	0.4
EL PASO (4%)	25,393	1,838	13,235	14,972	9,767	654	7.2	52.1	59.0	38.5	2.6
HUDSPETH (100%)	2,915	15	1,935	1,944	956	15	0.5	66.4	66.7	32.8	0.5

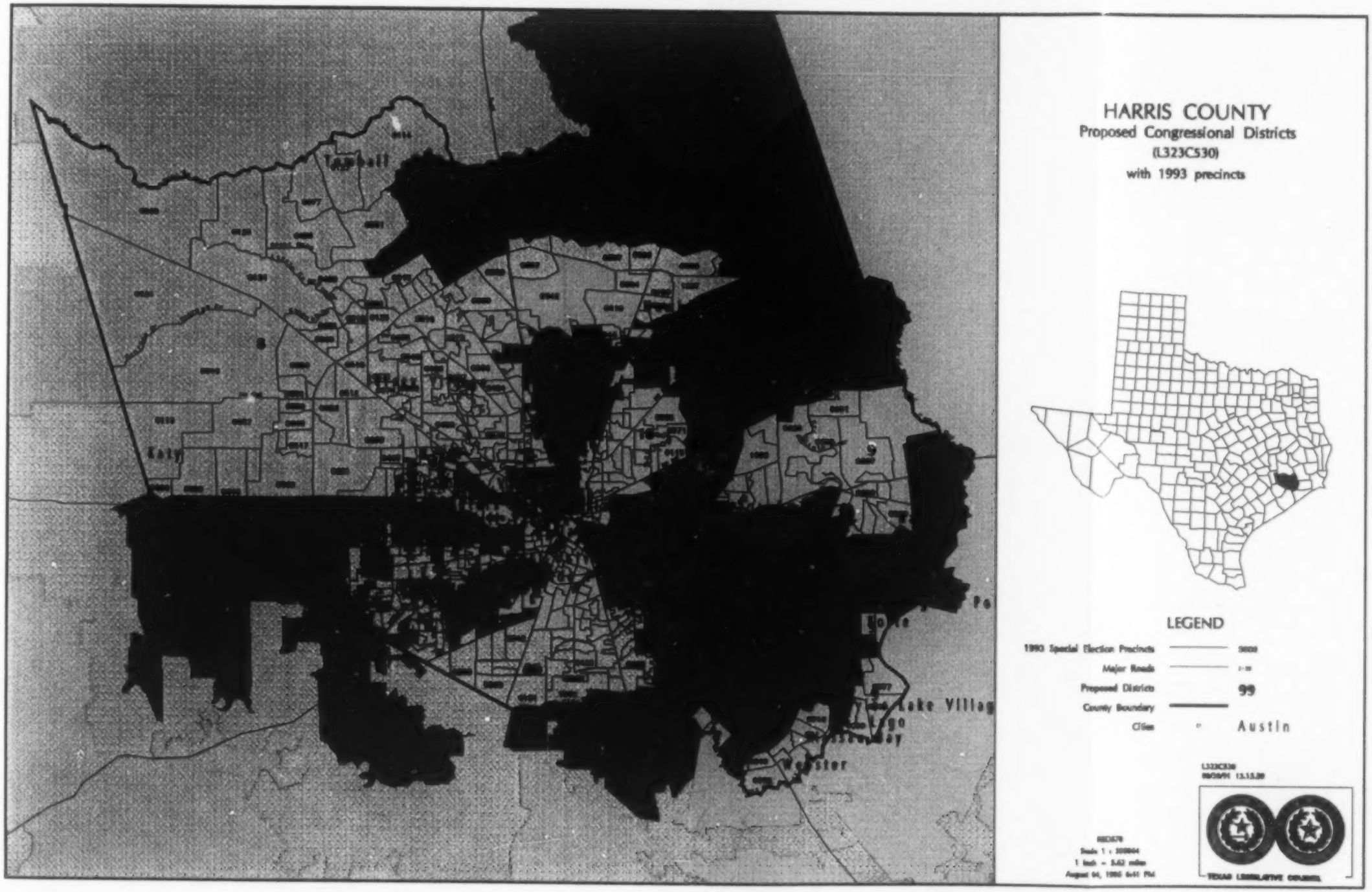
COUNTY	POPULATION						% OF POPULATION				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
JEFF DAVIS (100%)	1,946	7	770	776	1,154	16	0.4	39.6	39.9	59.3	0.8
KINNEY (100%)	3,119	57	1,570	1,618	1,463	38	1.8	50.3	51.9	46.9	1.2
LOVING (100%)	107	0	14	14	93	0	0.0	13.1	13.1	86.9	0.0
MAVERICK (100%)	36,378	32	34,024	34,037	1,571	770	0.1	93.5	93.6	4.3	2.1
MEDINA (100%)	27,312	92	12,134	12,205	14,928	179	0.3	44.4	44.7	54.7	0.7
MIDLAND (24%)	25,222	5,988	13,495	19,284	5,756	182	23.7	53.5	76.5	22.8	0.7
PECOS (100%)	14,675	62	8,331	8,382	6,209	84	0.4	56.8	57.1	42.3	0.6
PRESIDIO (100%)	6,637	6	5,417	5,419	1,197	21	0.1	81.6	81.6	18.0	0.3
REAGAN (100%)	4,514	127	1,941	2,049	2,458	7	2.8	43.0	45.4	54.5	0.2
REEVES (100%)	15,852	347	11,545	11,885	3,909	58	2.2	72.8	75.0	24.7	0.4
SUTTON (100%)	4,135	2	1,866	1,867	2,244	24	0.0	45.1	45.2	54.3	0.6
TERRELL (100%)	1,410	1	751	573	651	7	0.1	53.3	53.3	46.2	0.5
UPTON (100%)	4,447	94	1,666	1,754	2,666	27	2.1	37.5	39.4	60.0	0.6
UVALDE (100%)	23,340	47	14,104	14,139	9,030	171	0.2	60.4	60.6	38.7	0.7
VAL VERDE (100%)	38,721	757	27,299	27,979	10,418	324	2.0	70.5	72.3	26.9	0.8

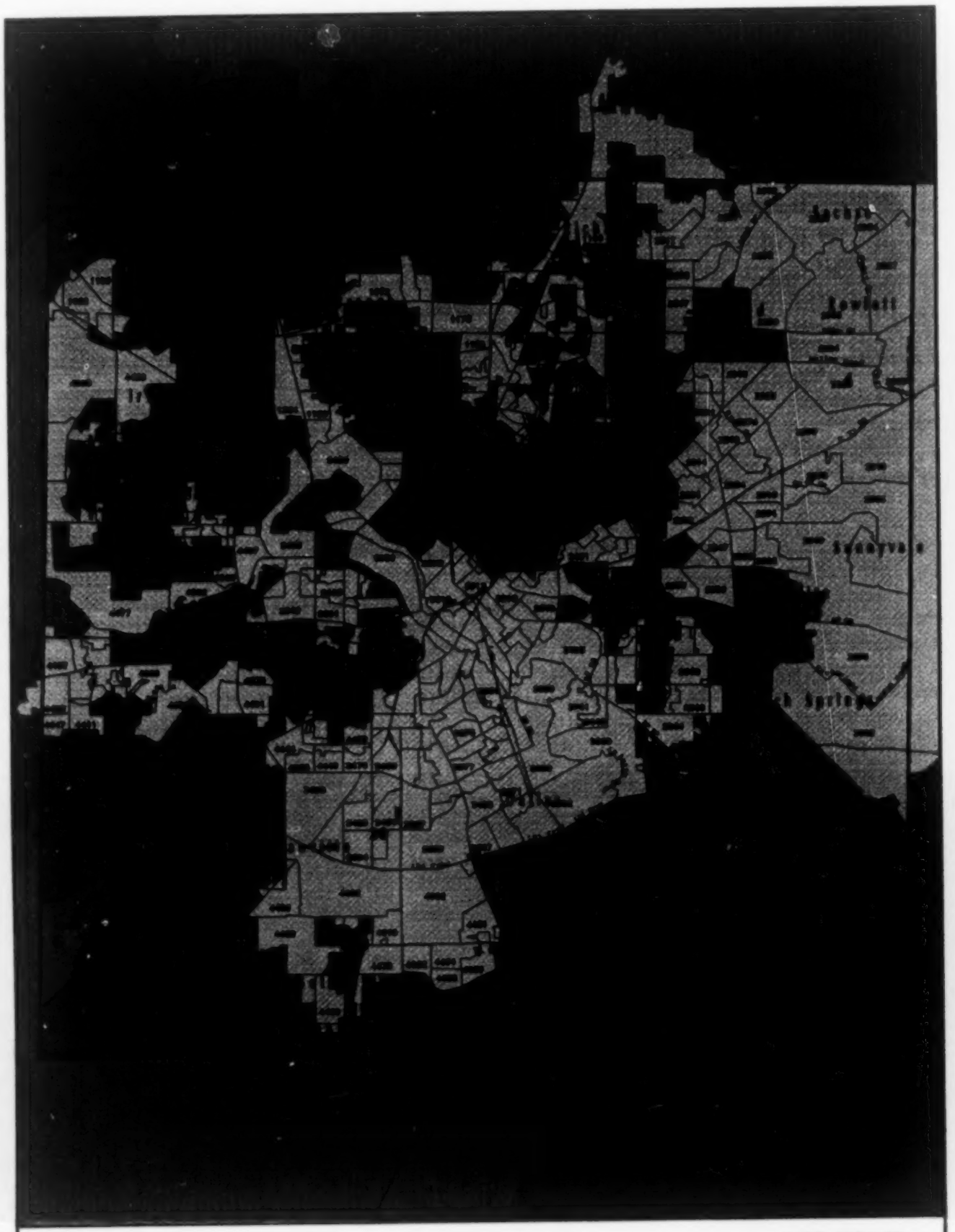
---------COUNTY----------	----------POPULATION----------						----------% OF POPULATION----------				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
WARD (100%)	13,115	457	4,830	5,262	7,728	125	3.5	36.8	40.1	58.9	1.0
WEBB (100%)	133,239	156	125,069	125,137	7,427	675	0.1	93.9	93.9	5.6	0.5
WINKLER (100%)	8,626	167	3,172	3,327	5,236	63	1.9	36.8	38.6	60.7	0.7
ZAVALA (100%)	12,162	296	10,875	11,159	954	49	2.4	89.4	91.8	7.8	0.4
DISTRICT 024 TOTALS	566,217	111,781	133,066	242,809	307,934	15,474	19.7	23.5	42.9	54.4	2.7
DALLAS (13%)	233,888	19,735	82,512	101,583	126,970	5,335	8.4	35.3	43.4	54.3	2.3
ELLIS (48%)	41,163	6,939	6,904	13,749	27,159	255	16.9	16.8	33.4	66.0	0.6
HILL (100%)	27,146	2,520	2,230	4,722	22,310	114	9.3	8.2	17.4	82.2	0.4
TARRANT (23%)	264,020	82.587	41,420	122,755	131,495	9,770	31.3	15.7	46.5	49.8	3.7
DISTRICT 025 TOTALS	566,217	262,846	166,997	374,812	170,715	20,690	46.4	20.7	66.2	30.2	3.7
AUSTIN (41%)	8,035	1,350	1,372	2,685	5,314	36	16.8	17.1	33.4	66.1	0.4
BRAZORIA (8%)	16,169	3,736	4,847	8,379	7,614	176	23.1	30.0	51.8	47.1	1.1
BRAZOS (1%)	1,271	164	216	380	890	1	12.9	17.0	29.9	70.0	0.1
BURLESON (36%)	4,839	1,414	703	2,085	2,726	28	29.2	14.5	43.1	56.3	0.6
CHAMBERS (1%)	193	0	44	44	145	4	0.0	22.8	22.8	75.1	2.1

---------COUNTY----------	----------POPULATION----------						----------% OF POPULATION----------				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
COLORADO (24%)	4,403	1,356	1,559	2,887	1,508	8	30.8	35.4	65.6	34.2	0.2
FORT BEND (37%)	82,534	37,016	26,486	62,748	17,647	2,139	44.8	32.1	76.0	21.4	2.6
GALVESTON (38%)	82,613	33,246	16,689	49,307	32,252	1,054	40.2	20.2	59.7	39.0	1.3
GRIMES (58%)	10,995	4,031	2,205	6,175	4,791	29	36.7	20.1	56.2	43.6	0.3
HARRIS (8%)	221,365	98,939	51,001	147,360	60,395	13,610	44.7	23.0	66.6	27.3	6.1
JEFFERSON (39%)	93,631	64,187	5,760	69,411	20,834	3,386	68.6	6.2	74.1	22.3	3.6
MILAM (23%)	5,350	1,471	1,063	2,509	2,817	24	27.5	19.9	46.9	52.7	0.4
WALLER (77%)	17,990	8,637	2,153	10,738	7,168	84	48.0	12.0	59.7	39.8	0.5
WASHINGTON (29%)	7,601	3,217	336	3,533	4,040	28	42.3	4.4	46.5	53.2	0.4
WHARTON (23%)	9,228	4,082	2,563	6,571	2,574	83	44.2	27.8	71.2	27.9	0.9
DISTRICT 026 TOTALS	566,217	22,591	50,448	72,537	471,877	21,803	4.0	8.9	12.8	83.3	3.9
COOKE (100%)	30,777	1,169	1,408	2,559	27,864	354	3.8	4.6	8.3	90.5	1.2
DALLAS (15%)	277,435	13,834	34,827	48,319	214,681	14,435	5.0	12.6	17.4	77.4	5.2
DENTON (66%)	180,653	6,664	10,727	17,281	157,748	5,624	3.7	5.9	9.6	87.3	3.1
TARRANT (7%)	77,352	924	3,486	4,378	71,584	1,390	1.2	4.5	5.7	92.5	1.8

COUNTY	POPULATION						% OF POPULATION				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
DISTRICT 027 TOTALS	566,217	13,760	374,783	387,536	173,888	4,793	2.4	66.2	68.4	30.7	0.8
CAMERON (100%)	260,120	825	212,995	213,562	45,354	1,204	0.3	81.9	82.1	17.4	0.5
KENEDY (100%)	460	0	362	362	93	5	0.0	78.7	78.7	20.2	1.1
KLEBERG (36%)	10,925	239	6,539	6,774	4,004	147	2.2	59.9	62.0	36.6	1.3
NUECES (100%)	291,145	12,691	152,051	163,997	123,716	3,432	4.4	52.2	56.3	42.5	1.2
WILLACY (20%)	3,567	5	2,836	2,841	721	5	0.1	79.5	79.6	20.2	0.1
DISTRICT 028 TOTALS	566,217	48,942	341,113	388,421	172,209	5,587	8.6	60.2	68.6	30.4	1.0
ATASCOSA (100%)	30,533	143	16,064	16,172	14,194	167	0.5	52.6	53.0	46.5	0.5
BEXAR (30%)	358,709	45,695	197,955	242,298	111,863	4,548	12.7	55.2	67.5	31.2	1.3
COMAL (22%)	11,381	238	7,248	7,472	3,828	81	2.1	63.7	65.7	33.6	0.7
DUVAL (100%)	12,918	12	11,267	11,275	1,601	42	0.1	87.2	87.3	12.4	0.3
FRIO (100%)	13,472	183	9,749	9,890	3,509	73	1.4	72.4	73.4	26.0	0.5
GUADALUPE (31%)	20,188	1,830	8,686	10,395	9,617	176	9.1	43.0	51.5	47.6	0.9
JIM HOGG (100%)	5,109	4	4,659	4,662	424	23	0.1	91.2	91.3	8.3	0.5
JIM WELLS (71%)	26,816	167	21,371	21,516	5,147	153	0.6	79.7	80.2	19.2	0.6

---------COUNTY----------	----------POPULATION----------						----------% OF POPULATION----------				
	TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	BLACK	HISP	B+H	ANGLO	OTHER
KARNES (69%)	8,573	349	4,763	5,093	3,431	49	4.1	55.6	59.4	40.0	0.6
LA SALLE (100%)	5,254	53	4,068	4,120	1,102	32	1.0	77.4	78.4	21.0	0.6
MCMULLEN (100%)	817	0	320	320	493	4	0.0	39.2	39.2	60.3	0.5
STARR (100%)	40,518	25	39,390	39,399	1,001	118	0.1	97.2	97.2	2.5	0.3
WILSON (100%)	22,650	242	8,054	8,289	14,273	88	1.1	35.6	36.6	63.0	0.4
ZAPATA (100%)	9,279	1	7,519	7,520	1,726	33	0.0	81.0	81.0	18.6	0.4
DISTRICT 029 TOTALS	566,217	68,774	331,677	396,574	157,720	11,923	12.1	58.6	70.0	27.9	2.1
HARRIS (20%)	566,217	68,774	331,677	396,574	157,720	11,923	12.1	58.6	70.0	27.9	2.1
DISTRICT 030 TOTALS	566,217	283,225	96,732	375,233	177,661	13,323	50.0	17.1	66.3	31.4	2.4
COLLIN (3%)	7,050	1,398	2,696	4,048	2,844	158	19.8	38.2	57.4	40.3	2.2
DALLAS (30%)	557,218	280,620	93,472	369,452	174,622	13,144	50.4	16.8	66.3	31.3	2.4
TARRANT (0%)	1,949	1,207	564	1,733	195	21	61.9	28.9	88.9	10.0	1.1


HARRIS COUNTY
Proposed Congressional Districts
(L323C530)
with 1993 precincts
LEGEND
1993 Special Election Precincts
Major Roads
Proposed Districts
99
County Boundary
Cities
Austin
Tomball
Katy
Webster
Lake Villag
TEXAS LEGISLATIVE COUNCIL



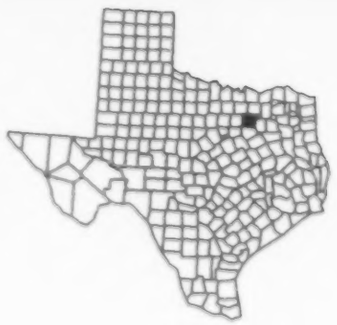
1

DALLAS COUNTY

Proposed Congressional Districts

(L323C530)

with 1993 precincts



LEGEND

1993 Special Election Precincts

Major Roads

Proposed District 99

County Boundary

Cities • Austin

State's Exhibit 28

MRED03A	PLAN ANALYSIS REPORTS SYSTEM	06/25/94
DATA: PL94-171	PLAN DEMOGRAPHIC ANALYSIS	16:49:01
PLANID: C500	CONGRESSIONAL DISTRICTS	PAGE 001

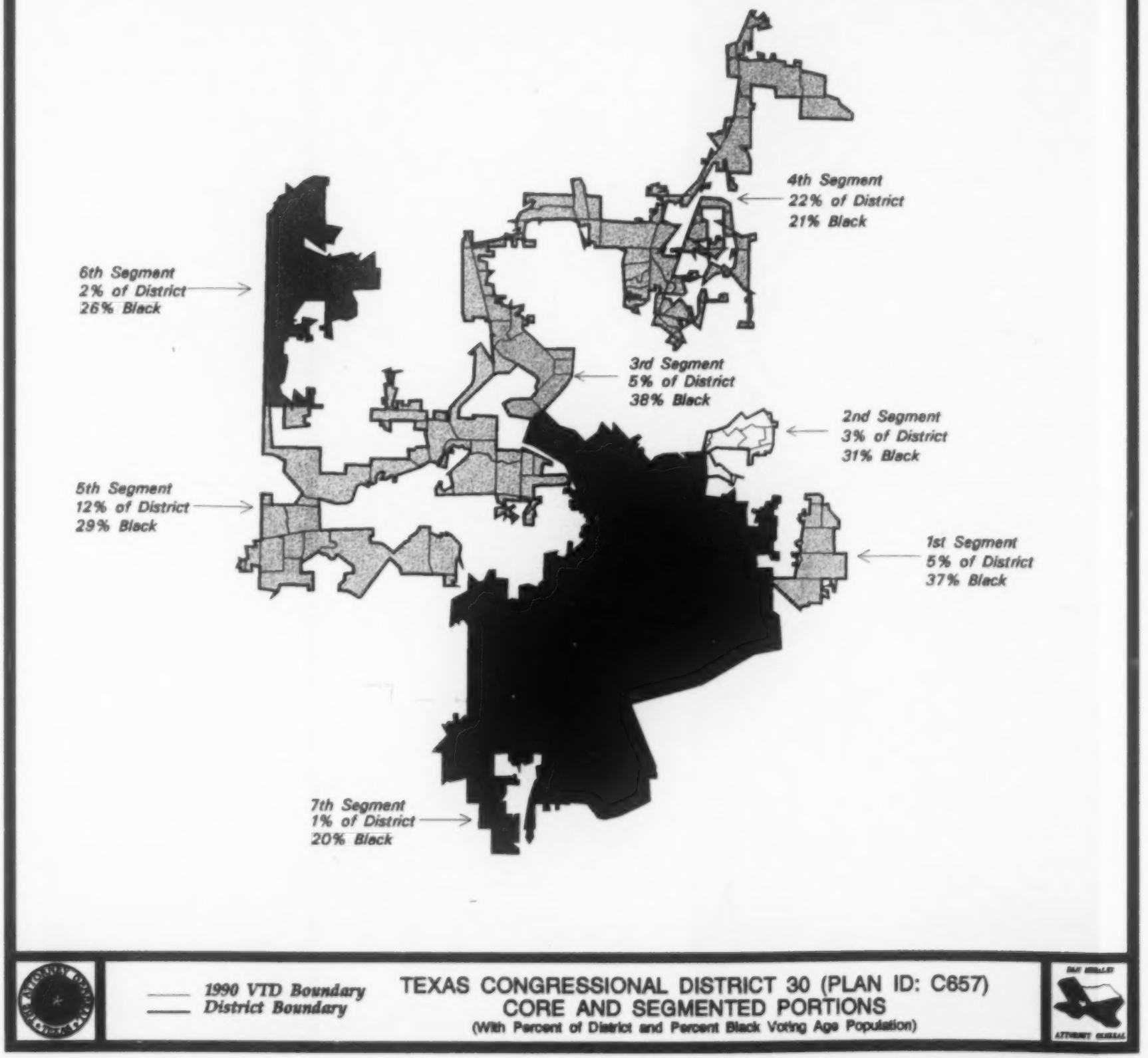
TOTAL POPULATION	16,986,510	UNASSIGNED POPULATION	0
TOTAL DISTRICTS REQUIRED	30	REMAINING DISTRICTS	0
IDEAL DISTRICT POPULATION	566,217	UNASSIGNED MEAN DEVIATION	0

	MEAN (AVERAGE)	SMALLEST POPULATION DIST.: 26	LARGEST POPULATION DIST.: 9
DISTRICT POPULATION	566,217	565,494	567,197
ABSOLUTE DEVIATION	405	-723	980
RELATIVE DEVIATION	0.07%	-0.13%	0.17%

PLAN'S RANGE OF DEVIATION: ABSOLUTE = 1,703 RELATIVE = 0.30%

**** SOURCE: DAN MORALES, ATTORNEY GENERAL OF TEXAS

State's Exhibit 33



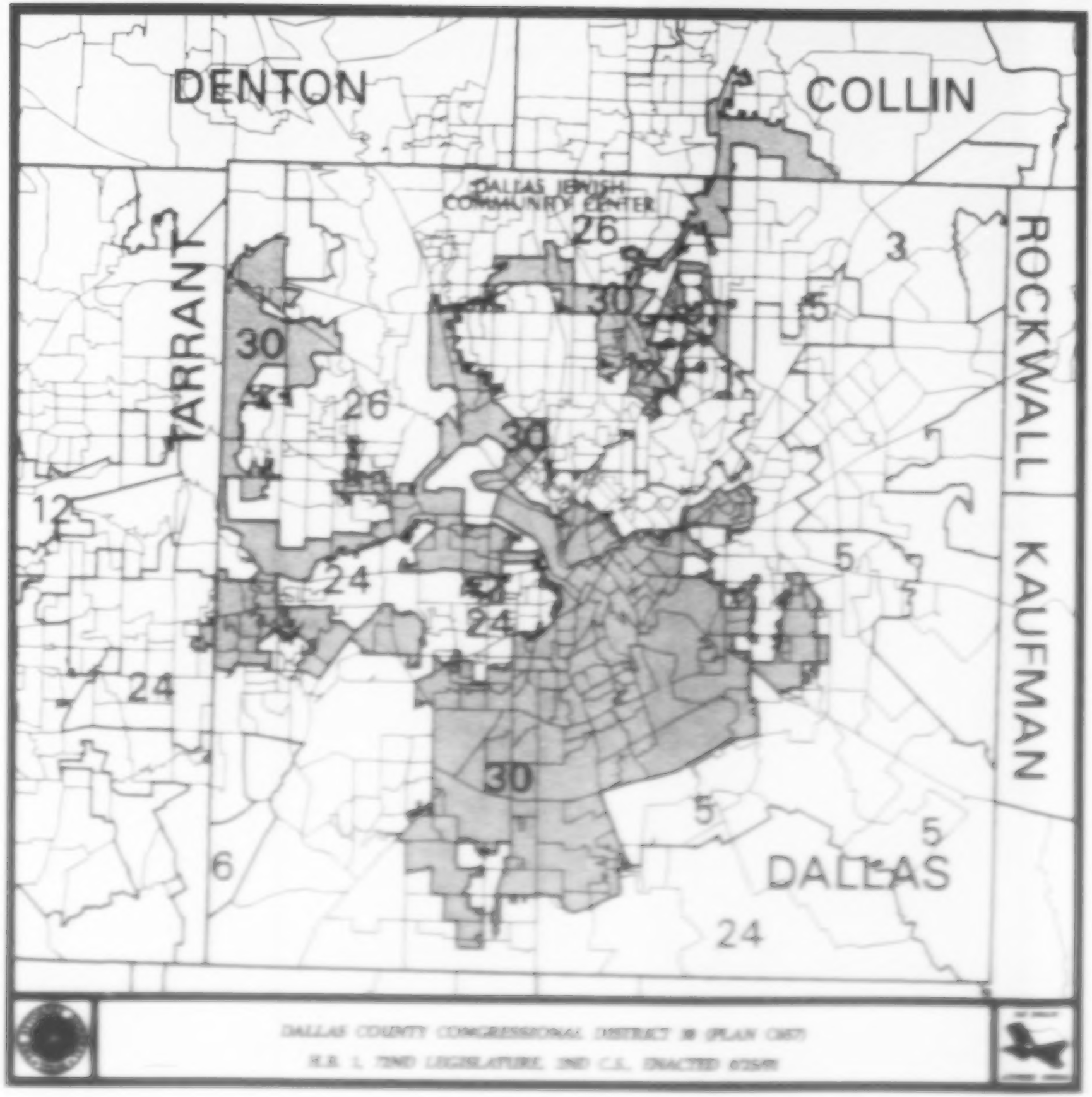
State's Exhibit 41

TEXAS CONGRESSIONAL DISTRICT 6

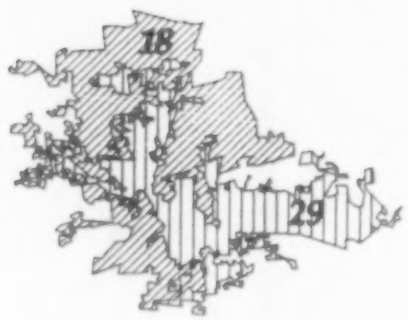
1967

337

State's Exhibit 53



State's Exhibit 54



COMPARISON OF CONGRESSIONAL DISTRICTS 18, 29 AND 30 FROM PLAN C657
WITH THE "TALKED ABOUT" DISTRICT 25 FROM PLAN C532
(DISTRICTS DRAWN TO SCALE)

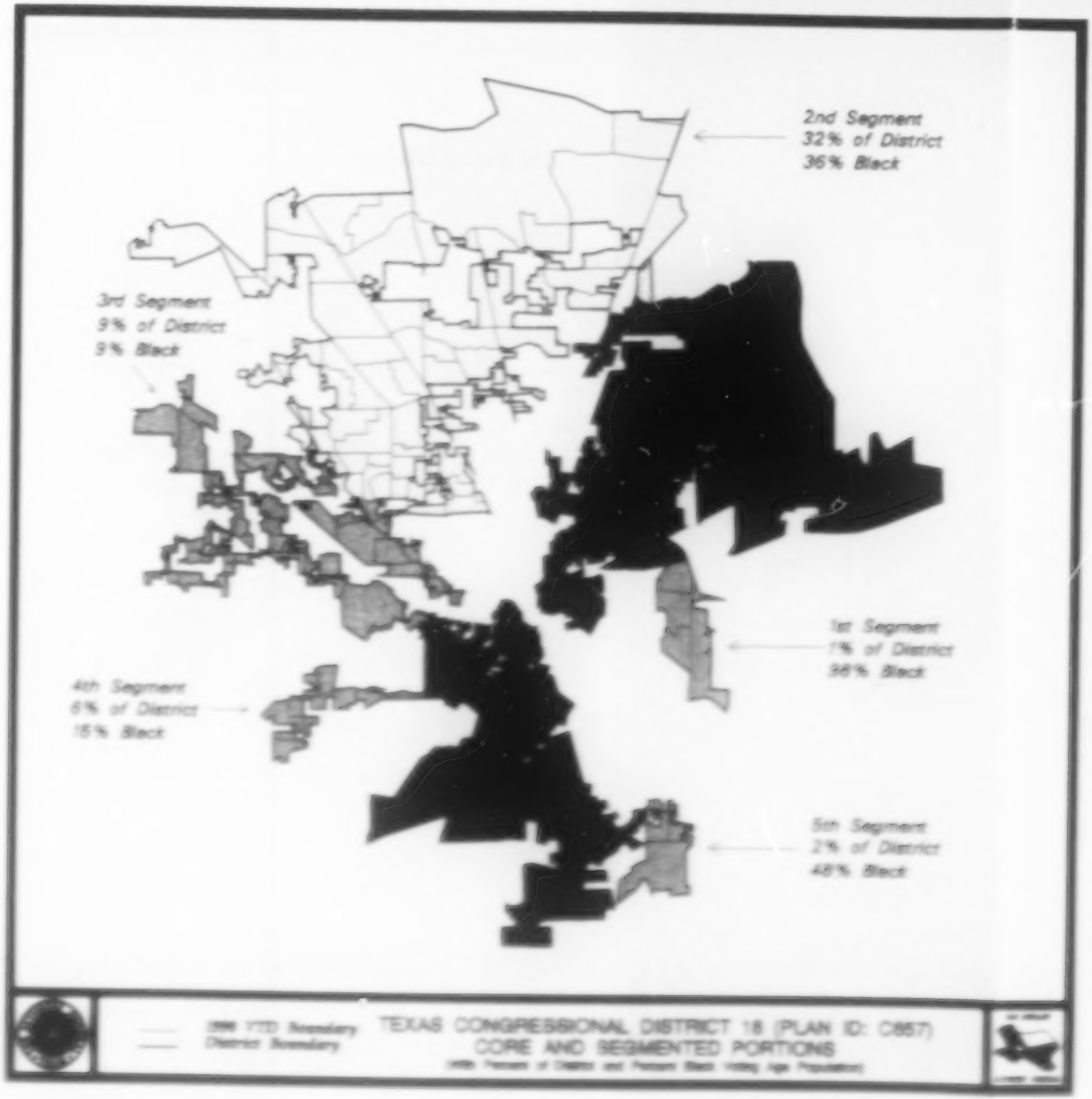
State's Exhibit 55

COMPARISON OF CONGRESSIONAL DISTRICTS 18, 29 AND 30 FROM PLAN C957
WITH NORTH CAROLINA DISTRICT 12
(DISTRICTS DRAWN TO SCALE)

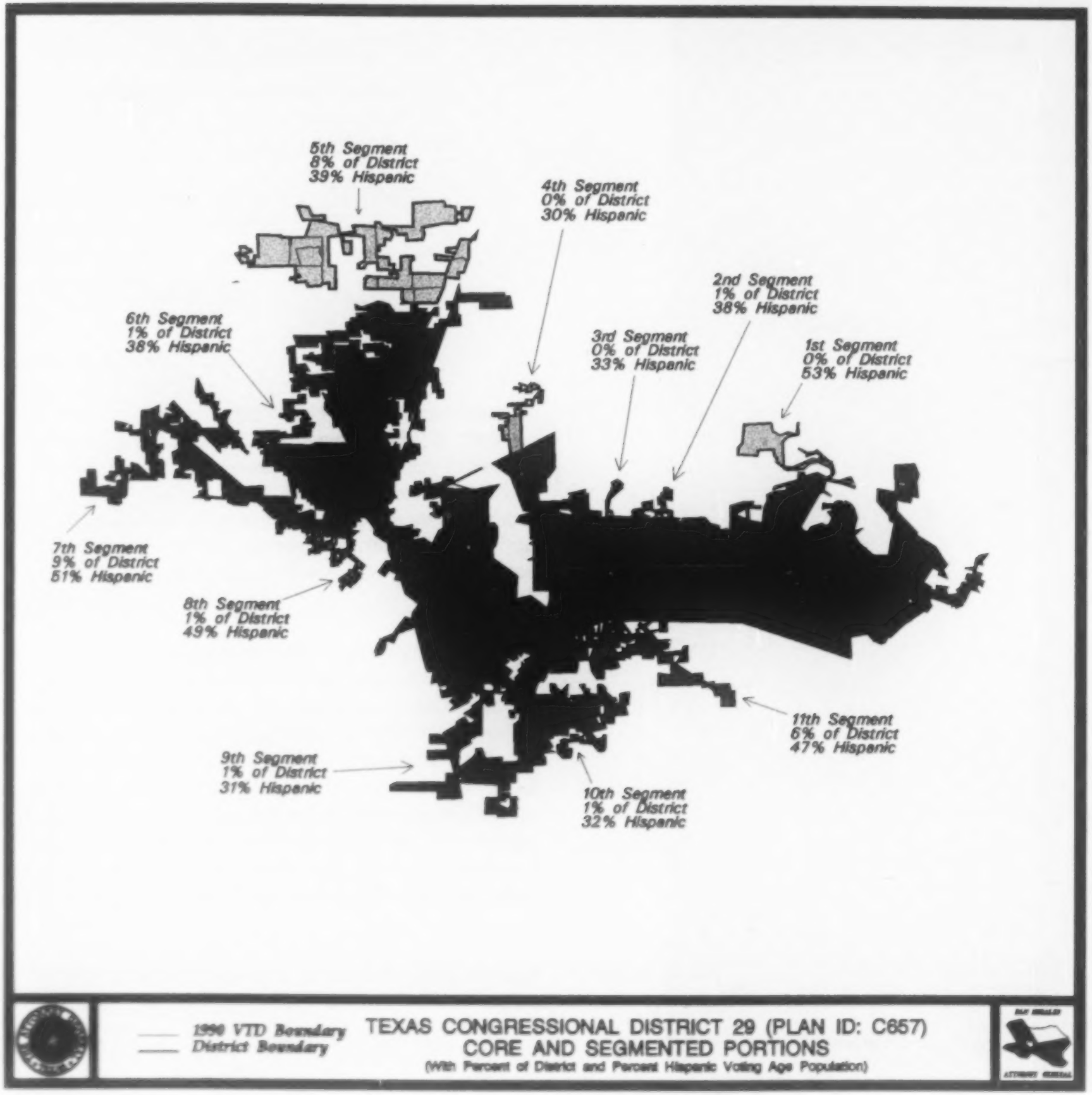
State's Exhibit 57

COMPARISON OF CONGRESSIONAL DISTRICTS 18, 29 AND 30 FROM PLAN C657
WITH 1967 TEXAS CONGRESSIONAL DISTRICT 6
(DISTRICTS DRAWN TO SCALE)

State's Exhibit 61A



Plaintiffs' Exhibit 61B



Government Exhibit 1007
Section 5 Preclearance Letter

November 18, 1991

Honorable John Hannah, Jr.
Secretary of State
Elections Division
P. O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Secretary:

This refers to Chapter 7 (1991), which provides for the 1991 congressional redistricting plan for the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on September 17, 1991; supplemental information was received on September 23, October 29, and November 1, 4, 13, 14 and 15, 1991.

We have carefully considered the information you have provided, as well as Census data and information and comments from other interested persons. At the outset, we note that the state waited nearly one month before seeking the requisite preclearance under Section 5 for the congressional redistricting plan. Although we have found that your initial submission was not complete, in an effort to expedite our review, as you requested, we have sought additional information informally and we are providing a determination within the 60-day period following your initial submission.

The Attorney General's review of voting changes occasioned by redistricting is governed by Section 5 of the

Voting Rights Act, which requires that the submitting authority demonstrate that the proposed change has neither a discriminatory purpose nor a discriminatory effect on account of race, color or language minority status. Georgia v. United States, 411 U. S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, preclearance may not be obtained if implementation of the change would clearly violate Section 2 of the Act. 28 C.F.R. 51.55.

Based upon that review authority, the Attorney General does not interpose any objection to the submitted redistricting plan. As authorized by Section 5, however, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the 60-day review period. See 28 C.F.R. 51.43.

While we are preclearing this plan under Section 5, the extraordinarily convoluted nature of some districts compels me to disclaim any implication that our preclearance establishes that the proposed plan is otherwise lawful or constitutional. I understand that litigation challenging the legal and constitutional propriety of various districts is pending. Terrazas v. Slagle, No. 91-CA-428 (W.D. Tex.). Our preclearance of the submitted redistricting plan in no way addresses the state's approach to its redistricting obligations other than with regard to Section 5. Indeed, Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See 28 C.F.R. 51.41.

/s/

John R. Dunne
Assistant Attorney General
Civil Rights Division

Government Exhibit 1033

Newspaper Article from
Times Herald Washington Bureau
by Richard S. Dunham
September 1, 1991

Johnson wins big for blacks
Senator's tactics pay off in congressional district

WASHINGTON - In the world of political poker players, Eddie Bernice Johnson is an unlikely card shark.

No bluff, no double talk, no small talk. When it came to the once-a-decade game of congressional redistricting, the Dallas state senator sat down at the table with some of the most skilled political gamblers in the nation - the Texas congressional delegation - and came away victorious.

Johnson, who made history seven years ago by becoming Dallas' first black senator, declared what she was going to do and did it. In the end, when the rest of the players folded, she held all the cards.

The prize: A new congressional district in Dallas with a black population of 50 percent and a total minority population of 66 percent. Johnson says she is a likely candidate in the district she designed so carefully.

"It's clear that she won exactly what she set out to win," said Rep. John Bryant, D-Pleasant Grove, whose East Dallas-based district was redrawn radically to satisfy Johnson's demands.

For the past seven months, Dallas voters were the chips in this high-stakes poker game between white Democrats and the party's most loyal constituency, black voters.

United by the emotional battle over Dallas City Council districts and embittered by the memory of a 1981

congressional redistricting plan that divided the black community between two white Democrats, black leaders expected the worst - and achieved the best.

"As Frederick Douglas said, 'Where there is no struggle, there is no progress,'" quoted state Rep. Fred Blair, D-Oak Cliff, chairman of the Legislative Black Caucus.

The Dallas drama dominated the redistricting debate and overshadowed the political bottom line: a smashing victory for Democrats. That is, if the plan is not voided by the Republicans' two trump cards, the Justice Department and the GOP-dominated federal courts.

Outnumbered in the Legislature and defeated in the 1990 gubernatorial election, Texas Republicans were relegated to the sidelines when the cards were dealt, complaining all along that the deck was stacked against them.

Despite GOP electoral gains in suburban and rural Texas, the plan approved by the Legislature last Sunday creates 22 Democrat-leaning districts, while packing Republicans into eight, the same number held by the GOP today.

"It looked fairly greedy to me," said state Sen. Teel Bivens, R-Amarillo. "They did an incredible job. It looks like those guys could sell manure to a feed yard."

The GOP's political impotence was not a surprise because Clayton Williams' collapse in the 1990 governor's race gave them little influence in the redistricting process.

But few political insiders expected Johnson and her allies among Dallas black leaders to play the game so well.

"She knew exactly what cards she had," said one Democratic strategist who had attempted to thwart Johnson during the process. "She played a very tough game and she won."

The first hand

When the redistricting process began in January, many strategists expected Johnson to be a bit player, despite her position as chairwoman of the Senate congressional redistricting panel.

Texas congressional Democrats agreed in January on the outlines of a redistricting proposal that created three new minority congressional seats (a black-dominated Dallas district and Hispanic seats in Houston and South Texas), while protecting all 27 sitting House members of both parties. "A lot of people thought it would be a piece of cake," said one white Democrat involved in the process. "Well, it wasn't."

The plans went astray the day they were unveiled - and blacks discovered that the new Dallas district was only 39 percent black and 22 percent Hispanic.

Dallas black leaders - already angered at the long and bitter struggle over council redistricting - felt betrayed once again. They feared that whites would hold the balance of power in the minority district, maintaining the ability to choose the black they preferred for the job.

"There was no trust any more after that," Bryant said. "There was a basic assumption that we were trying to steal their district."

Compounding the problem was a deep personality conflict between Johnson and Dallas Rep. Martin Frost, chairman of the national Democratic redistricting committee, IMPACT 2000. Johnson publicly chastised her fellow Oak Cliff Democrat and said she was "sick to death" of his attempts to dictate rules of the game.

Upping the ante

Angered at the congressional proposal, prominent blacks vowed to join with Republicans, if necessary, to challenge the plan in court if they did not receive a minority district drawn to their satisfaction.

While black lawmakers earlier had signaled willingness to accept a district with a black population of

47 percent or less, the stakes soon became substantially higher.

"It was not easy," said Johnson. "The people in the [black] community felt the district belonged to them for a very long time. But Frost and Bryant did not want to give up that [Democratic] population."

Johnson, who was trying to balance the interests of her constituents and her loyalty to her party, sided with her constituents.

"She created a monster that she couldn't control," said one Democratic redistricting insider. "In the end, this idea of a 50 percent [black] district grew and it took on a life of its own, and Eddie Bernice had no way to compromise on that issue."

Johnson and Blair made it clear that they were willing to sacrifice Frost and Bryant if necessary to achieve their goals. They also promised legal action to overturn any redistricting plan they did not accept, including intervention with the Justice Department, which must approve all Texas maps.

"We stood extremely strong for our position," Blair said. "We put a lot of pressure on some people."

Some congressmen thought Johnson was bluffing when she continued to demand a 50 percent district. They wanted to call her bluff in a showdown vote on the Senate floor.

The trump card

About three weeks ago, Johnson was dealt the ultimate ace. Lt. Gov. Bob Bullock sided with her in the Dallas stalemate.

"He indicated that it was his intention that Eddie Bernice Johnson was going to get 100 percent of what she wanted," said Rep. Jim Chapman, D-Sulphur Springs. "He made that very clear."

Johnson had been an early Bullock supporter for lieutenant governor and, more importantly, had been a

staunch supporter during the acrimonious special session. "He owed her," said one Democrat.

Rep. Ron Coleman, D-El Paso, the leading peacemaker among congressional Democrats, passed the word along to Bryant and Frost. According to one source, Coleman's blunt message boiled down to this: "If that's what the black community says it needs, that's what we're going to do."

"It was largely out of our hands after that," Bryant said.

Amid rumors that either Bryant or Frost would be sacrificed to protect the other Democrats, Gov. Ann Richards - who had taken a low-key approach to redistricting - weighed in on behalf of the beleaguered Dallas Democrats.

"She made some calls to key people," said one witness. "She said if Martin Frost and John Bryant are paired [against each other] or sacrificed, I'll veto the bill."

To create a 50 percent black district, the proposed district snaked through North Dallas into Plano, sometimes forming corridors barely wider than Central Expressway and LBJ Freeway. Republican state Rep. Fred Hill of Richardson protested that if you live more than 100 yards off the freeway, you're out of the district at some points.

In some integrated parts of Pleasant Grove and Oak Cliff, neighborhoods were divided so that black apartment dwellers are in one district while their white neighbors are in another district.

To replace black Dallas constituents, Bryant was given black sections of Tyler and Bryan, while Frost was given a predominantly black neighborhood on Fort Worth's east side.

Johnson was pleased with her efforts, "When I look at this map, I thank God for computers," she told her colleagues on the Senate floor.

The changes in Dallas produced ripples across East Texas, forcing Democrats Chapman, Ralph Hall of Rockwall and Charlie Wilson of Lufkin to accept more Republican districts.

"It was a tidal wave that came into East Texas," Chapman said. "The good news is, it didn't drown anybody."

House Speaker Gib Lewis of Fort Worth angrily objected two weeks ago to dividing his home county into six districts to satisfy Dallas politicians.

"Gib was not going to let Tarrant County be carved up just to serve the purposes of people on the other end of the turnpike," said Rep. Pete Geren, D-Fort Worth. "He dug in his heels."

After a nightlong effort at finding a compromise, Bullock and Lewis pressured Democratic lawmakers to accept the plan by signing a computer printout of the proposed districts. Among the congressmen, "no one was happy," said one source, but none dissented.

"We started out with a good game plan," lamented one congressional strategist. "But we made some real fundamental mistakes. So much of the rancor was totally unnecessary."

The next hand

After months of watching helplessly as the poker game progressed, Republicans are jubilant in anticipation of being able to deal a few cards during the next hand.

"It's going to be so much nicer to have the upper hand," said Republican redistricting expert Craig Murphy, an aide to Rep. Joe Barton, R-Ennis. "There's no question - no question at all - that this plan is going to be thrown out by the Justice Department."

Johnson said the Justice Department may object to the division of Fort Worth blacks between Frost and Geren, but she predicted the plan that ultimately becomes law will be nearly identical to the one adopted last week.

Texas Republican Chairman Fred Meyer, however, said the entire matter ultimately will be decided by Republican judges.

"The Democrats wasted all their time because they're going to lose in court," Meyer predicted.

Is It Art or Politics?

- The Dallas-Fort Worth area resembles a Jackson Pollock panting. It may take a lawyer or modern art expert to figure out who your representative is. Dallas County will have seven representatives in Congress, up from four. Tarrant County will have parts of five districts, up from two.
- More than two-thirds of Dallas County residents and more than half of Tarrant County voters will have new lawmakers.
- Rep. John Bryant's East Dallas-based 5th District, now fully contained within Dallas County, will stretch to Tyler on its east side and Bryan on its south side.
- The Texas A&M University community will be represented by a Baylor Bear (Jack Fields of Humble) and an SMU Mustang (Bryant). On the other hand, Baylor University will be represented by an Aggie (Chet Edwards of Waco). TCU gets a double whammy, it will be represented by a Texas Longhorn (Pete Geren of Fort Worth) and an Aggie (Joe Barton of Ennis).
- Denton will be represented by a congressman from Amarillo, Bill Sarpalius, who lives a good eight-hour drive away. Happy motoring!
- Meanwhile, former House Speaker Jim Wright of Fort Worth, a very partisan Democrat, is likely to end up with a Republican congressman, Barton.
- For the first time ever, Lyndon Johnson's hometown and Pedernales River ranch will not be in LBJ's old 10th District. They will be transferred along

with Johnson's alma mater, Southwest Texas State University in San Marcos, to the 14th District, represented by Greg Laughlin of West Columbia.

- The largest district in the state, San Antonio Democrat Albert Bustamante's 23rd District, will stretch 700 miles along the Mexican border from the El Paso County line to Laredo -- roughly the distance from Dallas to St. Louis.
- Blacks and Hispanics will constitute a majority in nine Texas districts; today six districts are minority-dominated.
- There are no black or Latino representatives in districts with Anglo majorities. Only one Anglo, Ron Coleman of El Paso represents a minority-dominated district.
- With the creation of a 50 percent black district, Dallas is likely to shed its distinction of having the largest bloc of black voters in the country without a black representative.
- Urban areas continue to gain power at the expense of rural Texas. Eighteen of the 30 representatives are likely to reside in Dallas, Fort Worth, Houston, San Antonio or their suburbs. Twenty years ago, only eight of the 23 Texas congressmen lived in the state's four largest cities and none lived in the suburbs.
- The state's most bizarre district, the 6th, which cuts a narrow swath from the Dallas suburbs to the outskirts of Houston, has been transformed into a suburban North Texas district. The old district, drawn to satisfy a powerful Aggie lawmaker, has been the butt of jokes for years. It was said that if you opened your car door while driving down I-45, you'd kill half the residents of the 6th District. Not anymore.

-- Richard S. Dunham

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Government Exhibit 1053

Newspaper Aricle from
Houston Chronicle
by Lori Rodriguez
August 24, 1991

Getting point of redistricting

WHEN it comes to priorities in the fine art of drawing a political district, what it looks like usually ranks down there with whether you use a pencil or ballpoint.

Unless what it looks like interferes with what you want it to do. Then what it looks like ranks up there with the Voting Rights Act and the United States Constitution.

When state Rep. Roman Martinez and House leaders recently popped out a revised version of a Hispanic congressional district being carved out here, they said the revisions were to make the district compact as required by law.

Never mind that one side of U.S. Rep. Craig Washington's district looks like the hind end of a scorpion. That U.S. Rep. Joe Barton's district stretches from far suburban Dallas to far suburban Houston. That the Hispanic district initially proposed by Martinez looked like a prehistoric flying reptile.

Never mind that the revised version sliced out a politically active Hispanic community in Baytown, the community is the home of Tony Campos. Campos is the father of political consultant Marc Campos and he is the campaign manager of former state Rep. Al Luna.

Never mind, even, that Luna is running against Martinez in the new district along with Houston state Sen. Gene Green - and Green's home was sliced out of the revised version.

Hey, the law requires compact districts and compact they will be. Maybe.

A compact agreement?

Under a tentative agreement reached Friday between Green and Martinez a revised-revised version of the new district includes Baytown and the homes of Martinez, Green and Luna. Compact? Oh, well ...

The fact is that the Legislature often goes for broke and draws the districts for every reason under the Texas sun except compactness. And the fact also is that, in this decade of emerging minorities, federal courts remain muddled on the rules of political redistricting.

"What the courts must address in the 90's is how much can you sacrifice compact districts, which has traditionally been one goal, in pursuit of another goal, which is to increase minority representation," says University of Houston political scientist Richard Murray.

"The Legislature obviously chose to just ignore compactness and go all out for stringing districts together, whatever the shape. But they will have an interesting time in the federal courts defending that."

Murray this week was doing some defending himself on behalf of the redistricting plan approved by Harris County Commissioners Court over Hispanic objections. Again it was question of priorities. When the goals of increasing minority representation, protecting communities of interest, saving the seats of incumbents and creating compact districts clash, which one wins?

"We showed that a Hispanic-dominated district could be created and commissioners chose not to listen to us," says Lisa Hernandez, local director of the Southwest Voter Registration Education Project.

"Now the burden of proof is on them to explain why - either to the Justice Department, where we are filing an objection to the plan, or to the federal courts, where we will file a lawsuit if we have to.

"And we have litigated 88 times through the federal courts and the federal courts have always upheld our case. We have never lost."

Effective county government

But Murray believes that compactness of commissioners' precincts is crucial to the effectiveness of county government.

"It's understandable that Hispanics feel their goal of having a Hispanic commissioner is the most important consideration," says Murray. But commissioners each employ several hundred people, provide all kinds of government services, maintain their own equipment and depend on being able to get around the district with reasonable ease.

"That may not have any standing under the Voting Rights Act, but they are important considerations in the practical, day-to-day world."

Besides being "incredibly contorted," Murray says the districts proposed by Hispanics needlessly split longtime communities like Baytown and Pasadena and dilute the strength of black Commissioner El Franco Lee by adding Sharpstown Anglos to his district.

"The political reality is that Commissioner Jim Fonteno has been in office a long time and can't be far from stepping down," says Murray. "And under the new plan, his district has just under 40,000 Hispanics and about 50,000 Anglos.

"Hispanics should overtake Anglos by the late '90s and by the next census in the year 2000, their numbers will be just about reversed and the gap will be widening."

All Hispanics really have to do is bide their time.

Government Exhibit 1065

Declaration of Dr. Charles L. Cotrell from *Vera v. Richards*, heard in the United States District Court for the Southern District of Texas

Dated June 20, 1994

Credentials and Experience

1. My name is Charles L. Cotrell; I am a resident of Texas and a native San Antonian. My current position is Vice President of Academic Affairs and Professor of Political Science at St. Mary's University in San Antonio, Texas. I received my B.A. and M.A. degrees in Government from St. Mary's University in 1962 and 1964 respectively. The Ph.D. in Political Science was earned from the University of Arizona in 1970. I teach in the fields of voting behavior, media, and elections, minority voting behavior, and public administration (see attached vita, Attachment A).

2. I have authored articles in learned journals, federal government reports, and professional conference papers on the topic of minority voter participation and representation, election structures and the Voting Rights Act. My experience also includes research and testimony on minority political access and the effect of election structures in numerous U. S. District Courts in Texas, New Mexico, Alabama, Florida, Louisiana and Massachusetts (see attached list of cases, Attachment B.). This includes testimony as an expert witness in Graves v. Barnes, 343 F. Supp. 704 (W.D. Tex. 1972 (three judge) aff'd in relevant part sub nom. White v. Regester, 412 U.S. 755 (1973). Further, my experience includes testimony on the extension of the Voting Rights Act to Texas before the U.S. House and Senate Committees on

the Judiciary, Subcommittees on Civil and Constitutional Rights (1975 and 1981). I also gave testimony on the effects of single member districts in the election of state legislators before a committee of the Texas Constitutional-Convention (1974). During the period 1976-78, I directed a project which monitored Section 5 submissions under the Voting Rights Act.

3. The United States Department of Justice has retained me in this case at a compensation rate of $100 per hour plus any expenses incurred.

Task of This Report

4. My task in this report is to summarize the history of law suits and Section 5 objections under the Voting Rights Act which were found to have violated the voting rights of Texas Hispanics and blacks. This summary is expressed either in the context of the state or in the context of particular counties within the state. Also, I will consider these historical findings as a backdrop to the current congressional redistricting plan adopted by the Seventy-second Texas Legislature in the Second Called Session (1991). I will also briefly examine population growth within the State and within Texas counties as a consideration in the adopted plan.

5. The summary of voting rights violations includes those adopted by the Texas Legislature which affected the entire state and those found to be violative by counties, school districts, and a select group of cities within the state. With the exception of the state's earlier history of voting rights violations, the time frame of this summary is from 1975 to the present.

A Brief Overview of Texas Voting Rights Violations

6. While this overview is not intended to be exhaustive, a brief examination of suffrage violations in Texas prior to the extension of the special provisions of Section 5 of the Voting Rights Act in 1975 demonstrates a patterned exclusion of minority voters. Beginning with the implementation of a statutory poll tax in 1902, the access of minority voters to the electoral system was rapidly curbed. An all-white primary system was implemented for most of the first half of the 20th Century; multi-member district election systems were adopted at most levels of government in Texas; the state adopted an annual voter registration system which implemented the most restrictive voter registration time period in the nation.

7. A primary election system which excluded black Texans was struck down by the U.S. Supreme Court in Smith v. Allwright, 321 U.S. 649 (1944); the poll tax was ruled unconstitutional in United States v. Texas, 252 F. Supp. 234 (W.D. Tex. 1966 aff'd 384 U.S. 155 (1966); the annual voter registration system, which replaced the poll tax as a restrictive device, was struck down in Beare v. Smith, 321 F. Supp. 1100 (S.D. Tex. 1971), aff'd sub nom Beare v. Briscoe, 498 F. 2d 244 (5th Cir. 1974; an absolute prohibition on the use of interpreters by non-English speaking voters was declared invalid in Garza v. Smith, 320 F. Supp. 131 (W.D. Tex. 1970); unconstitutionally high candidate filing fees were successfully challenged in Carter v. Dies, 321 F. supp. 1358 (N.D. Tex. 1970) aff'd sub nom. Bullock v. Carter, 405 U.S. 134 (5th Cir. 1973).

8. Prior to the extension of Section 5 of the Voting Rights Act in 1975, election of state legislators from multi-member districts was declared to impermissibly dilute the vote of Mexican American and black voters in Bexar (San Antonio) and Dallas (Dallas) Counties in Graves v. Barnes, 343 F.

Supp. 704 (W.D. Tex. 1972) (three judge) aff'd in relevant part sub nom. White v. Regester, 412 U.S. 755 (1973).

9. Again, prior to the extension of the special provisions of Section 5 of the VRA to Texas, the election of state legislators from multi-member election systems (at-large elections) in Nueces County (Corpus Christi), El Paso County (El Paso), McLennan County (Waco), Tarrant County (Fort Worth), Jefferson County (Beaumont), Lubbock County (Lubbock) were declared to dilute unconstitutionally the vote of Mexican Americans and blacks in Graves v. Barnes (Graves II) 378 F. Sup. 640, (W.D. Tex. 1974) (three judge) vac. as moot 422 U.S. 935. Mexican American and black representatives elected to the state legislature began to increase incrementally beginning in 1974 as a result of the two Graves decisions from thirteen minority representatives in 1972 to twenty-three in 1976).

10. Official discrimination was not limited to voting rights violations. A Texas statute required segregation of black and white school children. Mexican American children were segregated on the basis of ethnicity and forced to attend "Mexican" or "Latin American" schools despite the absence of a state statute requiring such segregation (see United States v. Texas, 342 F. Supp. 24 (E.D. Tex. 1971); also, Cisneros v. Corpus Christi I.S.D., 324 F. Supp. 599 (S.D. Tex. 1970); Delgado v. Bastrop I.S.D., C.A. No. 388 (W.D. Tex. Austin Div., June 15, 1948); Perez v. Sonora I.S.D., C.A. No. 6-224 (N.D. Tex. Nov. 5, 1970): Chapa v. Odem I.S.D., Civil Action No. 66-C-92 (S.D. Tex. July 28, 1967).

11. Mexican Americans were found to have been excluded from participation on juries in Hernandez v. State of Texas, 347 U.S. 475 (1954).

Section 5 Objections Under the VRA

12. An examination of a complete list of Section 5 objections issued by the United States Attorney General under the Voting Rights Act from December, 1975 through December 31, 1993 reveals that there have been 170 objections at the State level or to election changes within cities, counties, school districts or other political subdivisions. While the State of Texas is only one of nine states covered wholly or in part by the special provisions of the Voting Rights Act, the State has 21.2% of all Section 5 objections.

13. Of special importance for this report is the fact that 50 objections were listed in political jurisdictions within nine congressional districts with a majority Hispanic or majority black population. These are Congressional Districts 15 (74.5% Hispanic), 16 (70.4% Hispanic), 18 (50.9% black), 20 (60.7% Hispanic), 23 (62.5% Hispanic), 27 (66.2% Hispanic) 28 (60.4% Hispanic), 29 (60.6% Hispanic), and 30 (50.0% black).

14. The new Congressional Districts--28, 29, and 30--added by the 1991 reapportionment, had 21 objections within political subdivisions located wholly or in part of the districts. Nearly one-half (6) of the thirteen Texas counties constituting Congressional District 28, located in part of Bexar County and south Texas, contain Section 5 objections. The counties, or portions thereof, composing Congressional Districts 29 (part of Harris County) and District 30 (composed in part of portions of Dallas and Tarrant Counties) also contain Section 5 objections.

Voting Discrimination Found in School District Litigation

15. Attachment D contains a preliminary list of cases involving challenges to at-large election structures of Texas school districts, 1975-1988, which have resulted in the

adoption of single member districts or mixed plans. These cases reflect the existence of racially or ethnically polarized voting in these districts. The status of a large number of school district cases involving challenges to at-large elections, 1989-1994, is currently being researched

16. A number of the school districts contained on the list in Attachment D are located wholly or in part within counties which constitute parts of majority Hispanic Congressional Districts 15, 16, 23, 28, and 27.

Cities Election Changes, and Voting Rights Violations

17. During the past fifteen year period, the manner of election in Texas cities has undergone dramatic change from at-large election to the adoption of single member district and mixed plans (Brischetto, Richards, Davidson, and Grofman, Quiet Revolution in the South, 1994, 254). These changes have been the result of litigation challenging the method of election, settlements of law suits after litigation has been filed, or voluntary adoption by cities after the threat of law suits, as a response to black and/or Hispanic constituents, or as a response to a prevailing trend. The magnitude of these election changes in the largest cities (Corpus Christi, Dallas, El Paso, Fort Worth, Houston, and San Antonio) can be expressed in terms of population--these cities contain well over one-fourth of the State's population (28.7% or 4,875,222 persons).

18. Corpus Christi and Dallas adopted single member district plans after plaintiffs had prevailed in litigation challenging at-large elections in those cities (Alonzo v. Jones, CA-81-227 (S.D. Tex., Corpus Christi Div., 1983 and Williams v. City of Dallas, No. 3-88-1152-R (N.D. Tex., March 28, 1990, liability) (Feb. 1,4,5 and 27, 1991, remedy); San Antonio adopted a single member district plan after a Section 5 objection to annexations (April 2, 1976), while Houston

adopted a mixed plan after a Section 5 objection to annexations (June 11, 1979).

19. All of these cities are parts of majority Hispanic or black Congressional Districts 16, 18, 20, 23, 27, 28, 29, and 30.

20. The new Congressional Districts--29 (wholly within a part of Houston and Harris County) and 30 (primarily formed in the City and County of Dallas) are contained in jurisdictions which have a recent history of judicial findings or administrative determinations of voting rights violations.

Population Growth and the Location of New Congressional Districts

21. According to the 1990 Census of Population, the State of Texas has a total population of 16,986,510 persons. The State grew by 2,757,319 persons (19.4%) over the ten year period 1980-1990. Of the 1990 population, 10,291,680 were white or Anglo (60.68): 2,021,632 (11.9%) were black or African American; and, 4,339,905 (25.68) were Hispanic. "Other"--Asians, Pacific Islands, and others--accounted for the remainder.

22. While the growth rate of Texas as a whole was 19.4% over the decade, the growth rates of the Hispanic population was 45.4%; black population growth was 19.5%, while the white or Anglo growth rate was 10.1% (see Attachment E--"Population Growth Between 1980 and 1990 in Texas and Select Urban Counties").

23. In the document "Narrative of Voting Rights Act Considerations in Affected Districts" (September, 1991), the Texas Congressional Redistricting Staff state that the historical and anticipated population growth patterns within different geographic regions and counties of the State were

important considerations in the location of the new Congressional Districts 28, 29, and 30.

24. On examination of Attachment E, "Population Growth Between 1980 and 1990 in Texas and Select Urban Counties," reveals that the three large South Texas Counties--Bexar, Cameron, and Hidalgo-increased in population by 347,303 persons; combined with the population growth in the remaining rural counties south and west of Bexar, the heavily Hispanic region increased in population sufficient to add another congressional district. New Congressional District 28, composed primarily of Bexar County population (359,046 persons from Bexar in the CD 28), was added to the south Texas region (see also attachment F--"1990 Population by Race and Ethnic Origin: Texas and Select Urban Counties").

25. The location of new CD 28 in the northern portion of the south Texas region was partly determined by the historical north-south configuration of Congressional Districts 15 and 27 required by a Section 5 objection, upheld in a District Court and Supreme Court ruling, concerning a "packed" east-west configuration of Congressional Districts 15 and 27 adopted during the 1981 reapportionment (see Letter of Objection, January 29, 1982, as well as Seamon v. Upham, 536 F. Supp. 931 (1982) and Upham v. Seamon et al., 456 U.S. 37, 71 L.Ed. 2d 725 (1982).

26. The population growth of Harris County (408,652 persons, 17.0%) during the decode 1980-1990 influenced the Legislature's decision to include new CD 29 wholly within a portion of that County. The remarkable growth rate of the Hispanic population in Harris County, an increase of 275,858 persons for a total population of 644,935 by 1990 (a 74.7% increase), was an important consideration in drawing a new Hispanic majority Congressional District in Harris County (see Attachment E for the population growth rate in Harris

County). The total Hispanic population of 644,935 exceeded significantly the ideal population of a congressional district in Texas (566,217).

27. Population growth rates during the decade in Dallas and Tarrant Counties provide an important consideration in the location of new CD 30 in Dallas, Tarrant, and Collin Counties. Attachment E demonstrates that Dallas and Tarrant grew by 605,643 persons--a population which exceeds the ideal population of a congressional district.

Conclusion

28. This survey of judicial findings and administrative determinations under Section 5 of the VRA reveals a historically ensconced pattern of voting rights violations contained on statutes, procedures, and actions undertaken by the State or its political subdivisions. The survey focuses primarily on the past twenty year period. The survey illustrates numerous judicial findings and Section 5 determinations in the regions, counties, and cities with significant minority populations. These judicial findings and determinations are not just "ancient" history. For example, a Section 5 objection was made as recently as November, 1993 in Bexar County regarding the State's adoption of a proposal which abolished an elected board of directors of the Edwards Underground Water District, replacing the board, elected from a mixed plan which included single member districts, with an appointed board (see Letter of Objection, November 19, 1993).

29. Other recent examples of voting rights violations include the successful 1991 challenge in federal District Court to the manner of electing city council members in Dallas (Williams v. City of Dallas) and the United States Attorney General's 1991 Section 5 objection to the Texas Legislature's re-districting plan for the State House of Representatives. A

Section 5 objection to the House plan, passed in May, 1991, was interposed in November, 1991. Specifically, the plan was found to overconcentrate ("pack") Hispanic population in El Paso County, overconcentrate Hispanic population in Cameron and Hidalgo Counties, as well as adopt an east-west configuration of House districts in the south Texas counties immediately north of Cameron and Hidalgo Counties, overconcentrate Hispanic population in Bexar County House districts, and fragment the Hispanic population in Dallas County (see Letter of Objection, November 12, 1991).

30. In formulating the 1991 Congressional Redistricting Plan, the Texas Legislature was knowledgeable of the judicial findings and administrative determinations found in this survey. Outreach hearings were conducted throughout the State by the interim Senate Select Committee on Legislative Redistricting and by the House Redistricting Committee. The record of those hearings is replete with many of the voting rights findings and determinations contained in this report.

31. The Secretary of State of Texas receives copies of all Section 5 objections under the Voting Rights Act. The Attorney General of Texas defended the State in a number of cases which deal with the judicial findings and administrative determinations contained herein.

32. A number of the members of the Texas Legislature have served during the period of time covered by this report. Others, including Hispanic and black members of the Texas Legislature, initially gained election as a result of the early voting rights litigation (see Graves I and Graves II, for example).

33. As the Legislature's Congressional Redistricting Staff reports, population growth in the urban counties of south

Texas and Harris and Dallas Counties were important considerations in locating the new congressional districts in those areas. The increases in population in these areas were attributable to increased growth rates in the Hispanic population, and to a lesser degree, to the black populations of those areas.

34. The State of Texas has a lengthy historical and continuing record of voting rights violations against Hispanics and blacks through the decade of the Nineties. In fact, as the Congressional Redistricting plan of 1991 was being considered and adopted by the Legislature, a Section 5 objection was entered to parts of a redistricting plan passed by the Texas House of Representatives in late May, 1991.

Pursuant to 28 U.S.C. 1746, I, Dr. Charles L. Cotrell, declare under penalty of perjury that the foregoing Declaration is true and correct to the best of my knowledge, information and belief.

Government Exhibit 1092

Excerpts from Senate Committee of the Whole Hearing on Redistricting August 24, 1991

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[14]

SIBLEY : If I could harken back to some mathematics though, if you have two rural Congressional districts and you wanna get down to zero tolerance, it looks like it would only be necessary to split one county between 'em to reach that zero. Is that correct?

BIVINS : That's correct.

SIBLEY : So then any district that splits more than that would be done for other reasons, is that correct?

BIVINS : That's certainly my understanding Senator, yes sir.

SIBLEY : Thank you.

JOHNSON : Ah, Mr. President I can - - -

CHAIRMAN : Senator Johnson.

JOHNSON : - - - respond to much of what has been said. I think that one of the things that influences it is that the changing demographics in the state, there was the largest shift of population than ever before in the history of Texas. And it was in South Texas and urban areas. There are many other areas where there's much more space than people. And we happen to be in a great big state so it means that since we respect one person, one vote, with no deviation, we do have to travel a longer ways to get it. There - practically every city that is in more than one county was split. When I received the first draft from the Congressional delegation, several were. Many still are. And cities in the

urban areas, and the counties in the urban areas, are split very much. They're split to accommodate the Voters Rights Acts, accomply (sic) a goals, so that yes, districts be gerrymandered in order to maximize the minority vote. I think that the people that helped to put this map together know these areas, they have represented these areas, they know the complexion, they know the personalities, they know the communities of interest and they all had input, as everyone else could, because it worked right over there. Everything out in the open in the redistricting ah area. When I look at these maps I thank God for computers. I hope that we don't get down to houses on blocks, but we are down to blocks.

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Government Exhibit 1094

Excerpts from
Texas House of Representatives floor debates
August 21 & 25, 1994

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Excuse Mr. Ron Lewis because of important business on a motion representing Williamson.

Any objection?

Chair hears none. So ordered.

(ph) MR. SMITHEE: Members, thank you for that vote on the motion to table. This is so important to our area. This is something that the people in our area desperately want. It means a lot to our people, and I would just ask you to stay with us on this, because it doesn't hurt any other area of the State; it just affects our area. So thank you very much.

THE SPEAKER: The Chair recognizes Mr. Uher.

MR. UHER: Mr. Speaker and Members, when we attempted to draw this plan, we were looking at the State as a whole, we tried to recognize the value that each congressman has given to us. We have 27 congressmen, we have 30 new congressional seats.

Because of the flexibility that we had due to the fact that we had three additional seats, we

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were able to try to design districts that would recognize each incumbent and how that incumbent might be able to win in a district, having a reasonable chance to win in that district. In each of the new districts, we attempted to draw districts that would permit certain candidates who wanted to run to be elected from those new districts. So the flexibility has been built into the plan to recognize the overall contribution that each member of the delegation has provided.

But the amendment that has just been offered to us makes a very big difference as to how that is done. The difference that I see not only gives us at this point a change in West Texas, but it also may affect some of the other districts as it rolls out.

So therefore I ask that you give me a no vote on the final passage or on adoption of the amendment.

MR. CRADDICK: Mr. Speaker?

MR. SPEAKER: Mr. Craddick.

MR. CRADDICK: Will the gentleman yield?

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MR. COLBERT: You retrogress, and when you retrogress, you lose in court.

MR. REPP: But you are aware, aren't you, that it does improve the chances of a black --

MR. COLBERT: No, I'm not aware, because I haven't seen the numbers on it, Mr. Repp.

MR. REPP: Well, let me explain it to you again.

MR. COLBERT: No, I don't --

MR. REPP: The amendment as amended.

MR. COLBERT: Are you asking me a question? I've answered your question, Mr. Repp. I'm not aware.

MR. REPP: Well, I just made you aware of it. Thank you.

THE SPEAKER: The Chair recognizes Mr. Uher to speak in opposition.

MR. UHER: Mr. Speaker and Members, when you look at Mr. Craddick's plan, what you're looking at is a purely partisan plan; some have criticized the plan before us, a plan that we've debated all day, as not being partisan or as being too partisan.

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It's one of those animals that has had criticism from both sides.

The approach that we've tried to take with the plan that we've debated all day is to recognize a value that each congressman that we have contributes to the economy of this State and to your local area. And we've worked very hard.

I have met with almost every congressman that sits in Washington that represents all of us. And it's very important that we keep a congressional delegation that is effective and influential in Washington.

When I look at Mr. Craddick's plan, I recognize that it is a purely partisan plan, and I have no quarrel with that. That is his right as a member of this body. Well, let me tell you, if I want to be partisan in drawing the congressional plan, let me tell you what we could have done very easily.

I could have taken three Republican who represent the Houston area; Congressman DeLay, Congressman Archer and Congressman Fields. I could

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have paired those three, it would have been real easy to put them in a single district. I could have gone to the Metroplex and I could have put Mr. Barton, Mr. Armey, and Mr. Johnson in a single, Republican congressional district. I could have taken Mr. Smith in San Antonio and put him in a congressional district that he could not win or any other Republican can win. I could go to Lubbock and do the same thing to Mr. Combest, if I had wanted to draw a partisan plan.

We have avoided partisanship throughout this plan, and I know it hasn't satisfied some people, but he plan we have drawn reflects the value and the contributions that each of our congressman have given to this State over many years of dedicated service.

Because of that, I have to respectfully move to table Mr. Craddick's amendment.

THE SPEAKER: The Chair recognizes Mr. Craddick to close.

MR. CRADDICK: Mr. Speaker and Members, let me clear up a couple of things. First of all,

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have problems in the federal court, and I ask you to vote no.

MR. SPEAKER: The Chair recognizes Mr. Ogden to speak in opposition.

MR. OGDEN: Mr. Speaker, Members, if you needed another reason for limiting terms in Congress, this redistricting bill is it. This plan was drawn to protect incumbents. It will limit political competition and lock in a status quo that the overwhelming majority of Texans will tell you are dissatisfied with.

The people of my district worked tirelessly to express their desires before the House Redistricting Committee. Over 3,000 citizens, including both the Democratic and Republican county chairmen, expressed their desires as one of their highest priorities that Brazos County not be split. Yet, in order to protect an incumbent Dallas congressman and an incumbent Houston congressman, county lines were not respected, urban boundaries were not respected, precinct boundaries were not respected -- in fact, the only thing that doesn't

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appear to be split in my home town is households.

This sad story is repeated all over the

State. The people want reasonably drawn districts. This bill doesn't do this. The people want more choices at the ballot box. This bill won't give them any. The people want congressmen that won't have a guaranteed job for life. Once again, this bill ignores the clearly stated wishes of the people.

I urge you to cast a vote for the people that have elected us, and vote no on House Bill 1.

THE SPEAKER: The Chair recognizes Mr. Grusendorf to speak in opposition.

MR. GRUSENDORF: Mr. Speaker, Members, my good friend Tom Uher has indicated that this is a fair plan. I would like to respectfully disagree with Mr. Uher on that issue. In my opinion, fairness is in the eye of the beholder; so it depends on your perspective and where you're coming from, if this is a fair plan.

If you're a Democratic congressman, I think you would have to say that it's a fair plan

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because basically this is their plan, the plan that they've developed. If you're a mayor of a suburban community, I think you'd say that this is an unfair plan, because most likely, it splits your community. If you're a Republican congressman, you probably say Well, it's a safe plan, but it's not a fair plan; because virtually every Republican precinct in the area has been put into your district.

If you have a constituency like mine which

is primarily Republican, you'd have to say that it's not a fair plan. A major part of the growth in this State in the last decade has been in the suburban areas of the State, in Republican areas. We added three congressional seats this year with the Census. We have now eight Republican congressman out of 27.

With the adoption of this plan, you will have 8 Republican congressman out of 30. That's de facto regression and provides for less Republican representation in Washington, D.C.

Communities throughout the State are surgically split in what appears to be illogical, irrational and erratic pattern. But if you look at

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election result data throughout the State, you'll find that these lines are very logical and very rational. The lines have been drawn, dissecting communities very creatively in order to pack Republicans and maximize Democratic representation.

Texas is a competitive State. Yet this plan, as Mr. Ogden indicated, provides for few competitive seats. Many of us have had amendments to offer today that would keep our communities together, but the downside is that it might change one or two percentage points in an incumbent's ability for reelection.

Well, I think they should have competitive seats, and whether or not you've got another percentage point or not should not be what's important. It has been said that the primary reason for the adoption or the drafting of this plan is to protect incumbents. I don't have a problem with

protecting incumbents; but I think protection should center around keeping their communities of interest together, keeping their congressional districts compact, and maintaining their current.

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constituencies, not packing one party or another in order to draw noncompetitive districts so that they've got sure reelection opportunities.

We find ourselves here today trying to enact a fair plan; and once again we find ourselves subjected to gross partisan inequities. The plan we're asked to vote on today bears no resemblance to the districts that have comprised long-standing communities of interest. The sixth congressional district, for example, which has been represented by Joe Barton, has existed in its present form since the old days of Tiger Tieg who, by the way, was a Democrat; and for those of you who are not up on your history, Tiger Tieg represented the 6th District from 1946 to 1978.

This community has focused together over the years and accomplished quite a bit and developed a community of interest throughout that congressional district. They brought together projects such as the Superconducting Supercollider in Ellis County, and they've helped to make Texas A&M a great national university.

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During the redistricting hearings, the

House Redistricting Committee had testimony from literally hundreds of people and petitions from literally thousands of people and the citizens of the 6th District urging us to retain their district intact. The extraordinary efforts of the citizens in the 6th District will have all been in vein if this plan that's before us today is enacted in that district, as it most assuredly proposes to do.

Similar to many of the people who urged this body not to split their counties between congressional districts. By adopting this plan, we thank you reason our backs on the pleas of the citizens of Montgomery County, Johnson County, Ellis County, Kaufman County, Williamson County, Denton County, Midland County, Lubbock County, Randall County, and also many communities such as the ones some of us have discussed here today, in Arlington and in Tarrant County.

In looking at the 6th Congressional District, the 6th Congressional District goes all the way to the county line in Tarrant County on the

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south side; the 6th Congressional District goes all the way to the county line on the north sides, goes all the way to the county line on the east side, and all the way to the county line on the west side.

But it moves around real creatively, around many other congressional districts, picking up the precincts, the vote predominantly Republican in Tarrant County. It's really a crafty

gerrymandering plan.

West Texas in particular suffers from blatant, partisan gerrymandering under this plan. We've heard some discussion of that already today.

It unnecessarily splits the cities of Midland, Odessa, Lubbock and Amarillo. Instead of drawing lines that reflect communities of interest throughout the state; instead of maintaining cities and counties intact, this plan splinters cities, counties and regions of Texas in order to achieve political ends unrelated to the fair and full representation of all Texans in Congress.

The meandering of districts in this plan reaches new heights of blatant gerrymandering. Many

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of the districts in this plan may be fairly referred to as uncouth, tortuous and bizarre. The idea of compactness has been totally abandoned and thrown out the window when it conflicts with partisan advantage. And some of the districts are contiguous only in the most technical sense.

In Tarrant County, for example, there's a very narrow, very narrow -- probably a city block wide going up for a couple of miles in order to connect one of the extremities of the 6th Congressional District with another. This plan has distant pockets of population connected by narrow strips of land, as I just explained; many citizens of Texas will scarcely be able to determine which districts they're located in. Members of Congress will no longer represent identifiable communities

but will rather represent small pockets of voters strong together to ensure their reelection.

Due to Texas' surging population, this State has been allotted three new congressional seats, as I indicated earlier, bringing the total number of the Texas delegation to 30. Yet at a time

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when participation in my party, the Republican Party, has reached an all time high in this century, this plan allows for no new Republican congressional seats.

This freezing of the number of Republican districts actually reduces the party's statewide share of the total number of districts. The plan does this by packing Republicans into a few districts, effectively minimizing the voting power of the large and growing portion of the State's population. This plan was drawn with only one third in mind, and that is to protect Democratic incumbents, period. It does not have to be this way, and I urge you to right thing and think about the citizens of this State and do what's fair and vote no on this plan.

THE SPEAKER: The Chair recognizes Mr. Uher.

MR. UHER: Mr. Speaker and Members, we've been here all afternoon, since early this morning. As I told you when we began, this plan attempts to meet federal standards that we need to meet. One

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Transcription from audiotape.

* * * *

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counties on the north side of it, and the rest of it's on -- I thought I would put that in, and those people, at least think it's a community of interest also.

Thank you.

MR. THOMAS: Mr. Speaker.

THE SPEAKER: Mr. Thomas.

MR. THOMAS: Will the gentleman yield.

MR. CRAWFORD: I yield, Mr. Speaker.

THE SPEAKER: The gentleman yields, Mr. Thomas.

MR. THOMAS: Mr. Uher, when we were discussing your committee's plan before sending over to the Senate, I believe you made the comment that the plan was non-partisan that we sent over.

My question is, do you feel that you can say the same about this plan, with equal conviction in your voice?

MR UHER: I think it still maintains the non-partisanship the Senate has maintained about 80 to 85 percent of what we sent over there to them. I can't evaluate those changes as to whether or not it

[27]

makes the plan more partisan or less partisan.

I would guess --

MR. THOMAS: Would you still classify it as a non-partisan plan?

MR. UHER: Yes.

MR. THOMAS: Thank you, Mr. Uher.

THE SPEAKER: The chair recognizes Mr. Hill to speak in opposition.

MR. HILL: I reluctantly rise to speak against this plan, not for normal reasons but because I feel like I'm throwing my body in front of a train.

(Clanging of bells.)

[Laughter]

THE SPEAKER: Members, please. There will be no demonstration on the floor nor the gallery.

MR. HILL: I guess I better speak fast because I can hear it coming.

This plan -- and I'm looking at Dallas County's plan right now -- it looks like it was drawn on a Etch-a-Sketch.

I have no problem with the efforts that

[28]

have been here to provide minority districts where they can be drawn throughout this state. I think it's time that we have minority districts so that minorities can be elected to Congress.

Dallas County's plan, though, goes all across the county, from the southern part all the way to the northern part, and it uses the central expressway, which is Highway 75, as a corridor, to get all the way up to Plano, where it can pick up 1500 black voters; then it kind of hooks around and drops down into Garland.

That's in order to provide a certain

percentage of black voters for this particular plan.
The thing that I object to is that this plan totally ignores certain black precincts that where contiguous to the central and the core portion of the City of Dallas. Those precincts are ignored in the sense that they're not included in the minority plan.
Where they are included is in Democratic Congressman Martin Frost's district, and obviously they are there simply for the single purpose of

[29]
assuring his re-election because those are democrat votes.
MR. ECKELS: Mr. Speaker.
MR. HILL: I would object --
THE SPEAKER: Mr. Eckels.
MR. ECKELS: Would the gentleman yield for a question?
MR. HILL: I'm going to be through here in just a second, Mr. Eckels.
MR. ECKELS: As I was looking --
THE SPEAKER: He hasn't yielded.
MR. HILL: I'll yield.
THE SPEAKER: He yields. He yields.
MR. ECKELS: Just a real brief question, Fred. As you're looking at the Dallas County plan -- and you're familiar with those neighborhoods, and we've looked at the Harris County plan -- what I'm trying to understand you're telling us is that it's not necessary to go to these lengths to preserve these minority percentages, that it can be done without having to draw these snakes going

out into the wilderness there.

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MR. HILL: Oh, it certainly can. If you or I, or any semi-intelligent person was working at this and had one objective and that was to draw a fair redistricting plan, none of this would have been necessary.

That's my objection to this plan, members. My community that I live in, if you live on the west side of town, you'll be represented by Dick Armey, who I consider a find congressmen.

If you live on the east side of town, you'll be represented by Sam Johnson, our former colleague, who I consider a fine congressman. If you live within 100 yards of Central Expressway, on either side of it, you'll be represented by a new congress person, yet to be named, but your total community will be divided between three congressional districts and is totally unnecessary.

It does not have to happen. It has nothing to do with fairness. It has nothing to do with minority representation because if we were really concerned about minority representation, we would have drawn this map in such a way that the

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minorities were considered and not simply to elect democrats.

Thank you very much.

THE SPEAKER: The chair recognizes Mr. Uher to close. I'm sorry. The chair recognizes Mr. Blair to speak on.

MR. BLAIR: Mr. Speaker, members, I'm

going to make mine very brief, but for the record let me just make a couple of points.

First of all, District 30, Dallas County; I'm from Dallas County; that is the district that we have worked very hard to try to make sure that we would create a district that and African-American could win.

I pushed very hard for at least 50 percent. It happened on the Senate side. We will be voting in support of it. But there are other areas of the State of Texas that we have not done as well for.

There will only be two African-American seats out of the entire 30 in the State of Texas. Now, while we might be supporting today this bill,

[32]

we still will reserve the right if, in fact, there is another opportunity, another day, at another level to make a difference in enhancing minority representation, I must serve notice that we will be there to make sure that, first of all, our rights are protected, that our opportunities are enhanced, and if, in fact, that opportunity comes, we'll be there. But we will be supporting, this day, the efforts that we have put in to create the African-American district in the Dallas area.

Thank you.

THE SPEAKER: The chair recognizes Mr. Marchant.

MR. MARCHANT: Mr. Speaker, Members, I would like to speak in opposition to the plan today.

My little town of Coppell has 15,000 people in it, and I found out today the Senate bill

sent us back three congressmen. We'll be honored to have three congressmen if we can figure out who our congressmen is.

In North Dallas -- just the communities in North Dallas -- 15 suburban cities -- have at least

[33]

two, and sometimes three congressmen. I don't believe that the plan was drawn fairly, and I'm opposed to it.

Thank you.

THE SPEAKER: The chair recognizes Mr. Craddick to speak in opposition.

MR. CRADDICK: Mr. Speaker, Members, looking at this plan, I think it is an absolute disgrace to the people of this state and a slap in the face of the people of this state.

We spent thousands of dollars going across this state asking the people what they wanted. One of the main things they wanted, most people said, we don't care whether we're in District A, B, or C, but keep us together, keep our communities together; keep the communities together so that people will have voting strength and we can have an influence on whether or not we elect Mr. Jones or Mr. Smith, or whoever, to Congress.

We have totally done exact opposite of that. Why don't we go ask the people of this state?

Mr. Slagel has done a great job of doing

Lawson Defendant-Intervenor

Exhibit 14

Statement of Ted B. Lyon

from *Vera v. Richards*, heard in the United States District for the Southern District of Texas

Dated June 22, 1994

I, Ted B. Lyon, under penalty of perjury, state as follows:

1. I live in Rockwall County, Texas, in Ralph Hall's Congressional District, No. 4. I am an attorney, and my law office is in Mesquite, Texas, in Dallas County, in John Bryant's Congressional District, No. 5.

2. From 1979 to 1981, I served in the Texas House of Representatives. From 1981 to 1992, I represented Senate District 2 in the Texas State Senate. I was an active participant in the 1991 congressional redistricting process.

3. The State's number one concern in the 1991 redistricting was preservation of incumbent congressmen throughout the state, the vast majority of whom were white. I and a group of other state senators felt that it was imperative that the incumbents be protected. I particularly focused on Dallas area Congressmen Martin Frost and John Bryant, and to a lesser extent on Ralph Hall and Jim Chapman.

4. I stayed in constant contact with Congressmen Frost and Bryant and their staffs during the redistricting process. I also negotiated a great deal with then Senator Eddie Bernice Johnson and her staff. In fact, I had some real heated discussions, fights really, with Senator Johnson over population percentages and district lines. She won some, and I won some.

5. Although Eddie Bernice Johnson was the chair of the Senate Redistricting Committee that drew the

Congressional district lines, she did not have the votes to pass any plan she preferred. We had a coalition of votes, about 11 to 17 senators, who were concerned about protecting incumbents, not about what Congresswoman Johnson wanted. The State Senate has 31 members. Since two-thirds of the Senate has to vote to put any redistricting plan on the floor, she had to accommodate us--and that meant accommodating the incumbents--if she was to get a plan passed.

6. Population growth in the 1980s, which was greatest among minority groups, virtually dictated that the three new congressional districts in Texas be placed in Houston, Dallas, and South Texas. The group of 11 to 17 senators, as well as the members of the Legislature as a whole, concluded that the only way both to protect incumbents and satisfy the Voting Rights Act was to make the new districts majority-minority. The Legislature determined early in the process that it was possible to draw a reasonably compact majority African-American district in Dallas and reasonably compact Hispanic districts in Houston and South Texas. Once this had been decided, the shape of the new districts was determined by politics, not by race.

7. The group of senators I mentioned above simply was not going to let the incumbents be sacrificed by the creation of the new districts.

8. In focusing on the incumbent congressmen in the Dallas area, it became clear almost immediately that there would be a fight between Congressmen Frost and Bryant, on the one hand, and Senator Eddie Bernice Johnson, on the other, over the African-American voters who had previously resided in Districts 3 and 5. Frost and Bryant were not concerned about the race of these voters. They just wanted to hold onto enough Democrats to assure re-election. Senator Johnson was trying to take both minority and Democratic voters from what had previously been Districts 24 and 5 in order to construct a majority-black district that would satisfy the Voting Rights Act. Conflict arose, of

course, because Democratic populations and African-American populations are often the same. The redistricting process became a no holds barred political fight, and fangs were out.

9. For example, a great deal of fighting went on over Oak Cliff and other parts of West Dallas. Martin Frost wanted to keep those areas in his district, District 24; and he was particularly concerned about keeping Oak Cliff and Grand Prairie. Eddie Bernice Johnson wanted to draw those same areas into District 30. Eventually the areas were split between District 24 and District 30. If you look at this area on a map of the districts, you will see that it has an irregular shape. Incumbency protection is the only reason for that shape.

10. Grand Prairie is a predominately white, democratic community. Nonetheless, Johnson and Frost fought over it, split it between Districts 24 and 30, and increased the irregularity of their districts' shapes as a result.

11. Another area in which incumbency protection resulted in an irregular shape is East Dallas. John Bryant lives in Pleasant Grove in East Dallas and wanted that neighborhood kept in his district, District 5. We wanted to keep Congressman Bryant's seat a Dallas County seat because he lives there and has represented that area for many years. He has invested a lot of time, energy, and money in that area. People know him there. In a very early districting map drawn by Senator Johnson's staff, District 30 included Pleasant Grove and more of East Dallas than does the current plan. Those lines were changed to protect John Bryant. This made the District's shape more irregular to the east. Also, the fact that Congressmen Frost and Bryant insisted on populations from the south forced District 30 to shoot up to the north to regain the lost population. The irregular lines to the north would not have occurred but for the priority of incumbency protection, but the plan would not have passed if the incumbents had not been protected.

12. Had the redistricting priority been drawing an African-American district, the legislature could have passed a plan with a highly compact District 30. Districts 5, 24, and 30 would each have looked "prettier." Those of us who were working to protect the incumbents, however, did not allow that. Neither pretty districts nor compact districts are a priority in Texas, and they have not been since well before I was involved in districting, if ever.

13. In 1981, I focused more on redistricting of the Texas House than on congressional redistricting. Still, I was involved enough to say that incumbency protection spoiled the chance for a majority-minority district in Dallas in 1981.

14. Neither the intention of the legislature nor the effect of the redistricting was to segregate people by race. To suggest otherwise is ludicrous. I have never heard anyone in the State of Texas express the feeling that they were stigmatized or segregated by the 1991 congressional districts.

15. To me it is clear that this lawsuit is an effort by Republicans to gain more Republican congressional seats. In 1991, the Republican Party, both the Texas Party and the National Party, supported the creation of majority-minority districts because they thought it would make the surrounding districts better for Republicans. By avoiding packing and using some creative line-drawing, the Legislature was able to thwart the Republican strategy and satisfy the Voting Rights Act, while satisfying incumbents.

16. The Republicans are now using claims of reverse discrimination in an effort to obtain a partisan advantage. For example, the press reported about two weeks ago that Republican members of Congress are now raising funds for this lawsuit. At the time the districts were drawn, these same Republicans supported the creation of the maximum number of majority-minority districts. In fact, the Republicans sued the State in the Terrazas litigation claiming that the State had not created enough majority-minority districts.

17. Compactness is not a "traditional districting principle" in Texas. For the most part, the only traditional districting principles that have ever operated here are incumbency protection and partisan politics. There is no reason why the State should now have to draw compact majority-minority districts when it has shown no interest over the years in drawing compact majority-white districts.

Executed this *22nd* day of June 1994.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/

Ted B. Lyon

Lawson Defendant-Intervenor
Exhibit 15
Statement of Edward Martin
from *Vera v. Richards*, heard in the United States District Court for the Southern District of Texas

Dated June 22, 1994

I, Edward Martin, state under penalty of perjury, as follows:

1. My address is 8415 Bowling Green, Austin, Texas 78757. I was born and raised in Houston, where I lived until 1977. I worked for legislators and candidates from Harris County until I took my current job, on January 1, 1986. I have been Executive Director of the Texas Democratic Party since that date.

2. I was involved in the 1981 redistricting as Administrative Assistant to State Representative Paul Colbert. During the redistricting process, I actually worked as a "shared" employee, paid by several Harris County legislators to draw plans for the County and to work out agreements between various members. In 1981 to 1982, I worked with then Assistant Attorney General Rick Gray to provide technical support during the federal trial in connection with State Senate and House redistricting. Early in the 1983 legislative session, as an employee of Representative Colbert, I worked closely with Senator John Whitmire, the MALDEF plaintiffs, and the office of Attorney General Jim Mattox to develop a Harris County State Senate plan. That plan became known as the MALDEF Settlement Map and remained in effect until after the 1991 redistricting.

3. The Texas Democratic Party took a very active role in the 1991 redistricting process. Our role was to serve all our constituents, including both legislators and

grassroots Democratic constituencies. We drew maps, met with legislators and incumbents, and had quite a bit of say in how the final plan was configured.

4. Redistricting maps are not drawn in a vacuum. A range of public policy concerns are always at play. First, incumbency protection is an important public policy concern for two reasons. The Government runs on a seniority system. Incumbent congresspeople serve on committees and wield influence that takes time to develop and that grows stronger over their years in Congress. For example, Democratic Congressman Andrews of District 25 and Republican Congressman Bill Archer of District 7 serve on the House Ways and Means Committee. Their participation on that committee has helped Texas to secure funding for the NASA Space Center in southeastern Harris County and for the Superconducting Supercollider in Ellis County. Congressman Jack Brooks of District 9 was formerly the chair of the House Government Operations Committee and has a great deal of seniority and experience in connection with NASA. His district has included the NASA Space Center in southeast Harris County since the 1981 redistricting. Congressman Kika de la Garza of District 15 chairs the House Agriculture Committee, and his work has been important to furthering Texas' agricultural interests in Congress. The State had an extremely high interest in maintaining such representatives, regardless of their party affiliation.

5. Moreover, we believe that it is not our role to defeat someone with a pencil after voters have already chosen that person as their representative. For example, the small fingers joining District 18 and District 7 could easily have been drawn larger, thereby bringing more District 7 voters into District 18. But the voters in District 7 had chosen Congressman Archer as their representative, he had seniority, and the new lines protected him.

6. Although a congressperson is not required to live in the district he or she represents, it is commonly

viewed as a political necessity. Accordingly, the locations of incumbents' homes also affected the district lines. Bill Archer lives in a southern area of District 7 that juts into District 18. Mike Andrews lives in District 25, very close to the District 18 boundary. Joe Barton lives at the southern tip of District 6. Martin Frost lives in an area of District 24 that juts into the east side of District 30. John Bryant lives in an area of District 5 that juts into the west side of District 30.

7. Second, satisfying Section 2 and Section 5 of the Voting Rights Act is an important concern. As a southern state with a continuing history of minority discrimination, of which the legislature was aware, as a state subject to Section 5 of the Voting Rights Act, Texas must make sure that its redistricting gives its significant minority populations a chance to elect representatives of their choice.

8. Third, 76 votes are needed to pass a plan in the House (a majority) and 21 votes are needed in the Senate (two-thirds). Invariably, many legislators have political ambitions that inject self-interest into the redistricting process. In any redistricting, at least a handful of Texas legislators will attempt to draw districts that enable them to run for some higher office. The 1991 process was no different. Three of the state senators most involved in the congressional redistricting, Eddie Bernice Johnson, Frank Tejeda, and Gene Green, ran for Congress and were elected in the election following passage of the new map. A key member of the House Redistricting Committee, Roman Martinez, was also expected to run.

9. Fourth, a significant public policy concern is preservation of communities of interest. In the view of those most involved in the Texas redistricting process, communities of interest are groups of people that work, socialize, participate in political activity, and worship together. In urban areas, communities do not grow in neat geometric patterns. Therefore, geographic compactness and regularity of shape are not definitive urban districting concerns. In fact, drawing urban districts in circles or squares

will divide often people of common interests, not bring them together. The best urban districts are based on knowledge of the communities of interest in the area, not on concessions to aesthetics. As a result, we could not just look at a state map or any given plan to determine whether a district made sense. In addition to considering cities, counties, and towns, we had to consider the realities of communities that do not appear on maps. Communities do not appear on maps.

10. For example, in 1981, Congressional Districts 5 and 24 were divided by the Trinity River that flows through Dallas. Looking at a map, the use of a river to divide two districts may seem logical. In reality, the boundary divided a cohesive African-American community of interest virtually in half.

11. An understanding of communities of interest in Houston is indispensable to an understanding of the configurations of the Houston area districts. The absence of zoning restrictions in Houston has led to tremendous diversity in housing patterns. Today, the African-American community in Houston has three core areas. Running to the northwest of Downtown are the traditional black neighborhoods of Acres Homes and Studewood. Running to the northeast are the traditional black neighborhoods of the old Fifth Ward, such as Kashmere and areas up Homestead Road. To the south is the outgrowth of the old Third Ward. Both the 1981 and the 1991 congressional districting map included these core areas of the black community in District 18. Similarly, in both the 1981 and 1991 redistricting, the Hiram Clarke-South Post Oak community was united in District 25 across the Fort Bend County line.

12. Although their neighborhoods are not confined to a neat circle or square, the African Americans in Houston undeniably constitute a community of interest. They also share the same job and media markets, including media directed specifically to African Americans. Despite its shape, the African-American community in Houston is strong and cohesive. The configuration of District 18 reflects an

understanding of this community. District 18 also largely coincides with state and local majority-black districts.

13. Similarly, District 29 joins members of a community of interest. The Hispanic community in Houston has grown out in two directions, along major city streets and thoroughfares. District 29's northern wing, which tracks Airline Boulevard, includes a Hispanic community that has grown north from Downtown. Turning southeast, this community has expanded down Harrisburg Boulevard and the Gulf Freeway. District 29 also reaches due east, out along the ship channel, from the core Hispanic community around the Turning Basin.

14. During the redistricting process, state legislators Gene Green and Roman Martinez battled to some extent over the configuration of District 29. Green pulled District 29 north to his home territory. Martinez pulled it south to his support base. Their political battle resulted in a district whose boundaries really outline the Hispanic community in Houston. District 29 joins people of common socio-economic and ethnic backgrounds. Like the people of District 18, the people of District 29 work, play, and engage in politics together. Hispanic, Spanish-language media also serve the Hispanic community throughout District 29.

15. In contrast, the District 29 in the map that I understand has been drawn by Plaintiffs in connection with this case (Plan No. C676) mixes people of diverse backgrounds. The white population in that District 29, for example, would be far more likely to relate to the people in parts of Plan No. C676's District 7 than to the portions of the African-American and Hispanic communities that are lumped with them and included in that plan's District 29.

16. Likewise, the current District 25 crosses the county line from Harris into Fort Bend. By doing so, it captures the entirety of the Hiram Clarke-South Post Oak community in one district. Moreover, this community is in fact part of the City of Houston, which itself crosses the county line. To the people living in that area, the county line

is unimportant. Yet Plan No. C676 follows the county line on the map, thus ignoring the reality of life in the area, and consequently dividing a community that has been wholly in the same congressional and state districts for 12 years.

17. During the redistricting process, various maps were floated containing an additional African-American district. These districts looked like "strings of pearls" strung across the State. But they were not rejected based on their physical appearance. Rather, each proposal threatened various incumbents. In addition, many of these maps connected people in communities that do not regularly interact and do not share media or job markets, although they are of the same race.

18. In 1991, I met with Congressman Craig Washington to discuss the configuration of District 18. Congressman Washington suggested that we could draw a relatively simple district based on the shape of Senate District 13, a majority-black district. Such a district would have taken a large chunk out of District 25. Because the shape suggested would have put incumbent Mike Andrews at risk, we could not draw such a district. In drawing congressional districts within and around Harris County, the only way to protect all incumbents of both parties, draw two majority-minority districts, and get 76 votes in the House and 21 votes in the Senate was for one district to go through Downtown and the other to go around it.

19. Congressman Washington also requested that District 18 continue to include the largely gay community of Montrose. That community also wanted to remain in District 18 because Congressman Washington had been very supportive of it. Montrose is predominately white. The area was purposely included in District 18.

20. During the redistricting process, Congressman Washington was treated like any other incumbent. He was given a district that offered a reasonable opportunity for his re election. In drawing District 18, race was considered along

with other voting patterns as was necessary to protect the incumbent and to avoid retrogression.

21. Except as considered under the Voting Rights Act, race was irrelevant to the drawing of a Texas Congressional redistricting map.

Executed this *22nd* of June 1994.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/
Edward Martin

Lawson Defendant-Intervenor

Exhibit 17

Statement of Jesse D. Oliver

from *Vera v. Richards*, heard in the United States District court for the Southern District of Texas

Dated June 23, 1994

I, Jesse D. Oliver, under penalty of perjury, state as follows:

1. I live and work in Dallas, Texas, in Congressional District 30. My address is 1717 Main Street - PB49, Dallas, Texas 75201. I am a lawyer and an African-American.
2. From 1983 through 1986, I served in the Texas House of Representatives. I represented a majority-minority district, District 111, in the Oak Cliff area of southeast and southwest Dallas. In 1986, I ran in the Democratic Party primary for the State Senate against two other African Americans, Eddie Bernice Johnson and Jesse Jones. Eddie Bernice Johnson defeated me in the run-off election, thereby becoming the first African-American State Senator from Dallas County and only the third African-American to serve in the State Senate since the Reconstruction era.
3. House District 111 is the successor to District 33-O, which was created as a majority-minority district in the early seventies as a result of redistricting lawsuits. District 111 continues to be a majority-minority district today. Prior to the creation of majority-minority House Districts in Dallas County, elected officials were rarely seen in the minority community and rarely sought input from minority residents. African-Americans had little if any input into the state or local governing process. When I first took

office as a representative in 1983, the minority community was still largely surprised to see elected officials (their representatives) in their neighborhoods, greeting them on the streets and shopping at their neighborhood stores. At that time, my constituents were still learning exactly what the role of a legislator was, and what I could do to impact their every day lives. When people would see me in the community, accessible to them, asking them questions, asking for their opinions, they would invariably ask me why wasn't I in Austin. They were unaware that a legislator, a representative, relies on constituent input. The creation of the majority-minority House Districts helped to afford them an opportunity to understand that they, "the people," had a role to play in government. That, through their elected representatives, they could have an impact on the laws under which they lived. Although history and experience had taught them to be skeptical, majority-minority districts afforded them the opportunity to elect representatives who were aware of and sympathetic to their needs and points of view, and also taught them that government can work for them.

4. During my tenure in the Legislature, I witnessed the raising of issues of concern and importance to African-Americans which had not been heard in the State Capitol since the last African-American legislator left the Legislature around the turn of the century.

5. In 1986, I was appointed by the Governor to fill the last two years of an unexpired term as Judge of the 95th Judicial District Court of Texas. I served as a district judge for two years, and then ran for that position in the next election. I was unopposed in the primary. Joe B. Brown a white male who had run as a Democrat and lost at least one election for a district

judgeship about eight years earlier, ran as a Republican in the general election. In response to a newspaper writer's question as to why he was running against me, since he had already stated that he thought I had done an excellent job as a judge and that he did not believe he could do better, he replied, "Some Republican is going to beat him and it might as well be me." The election was at-large, and I lost by one or two percentage points.

6. From 1988 through 1990, I worked as general counsel for the Texas Department of Agriculture in Austin. In January 1991, I was appointed Deputy Attorney General where I served until 1992. In 1992, I returned to Dallas to the private practice of law, and filed as a candidate for the State Senate seat being vacated by Eddie Bernice Johnson. The other candidates in that election were Royce West and Gerald Larry, both African-Americans. Royce West won the primary election and presently serves as a state senator.

7. Since July 1993, I have served on the Dallas Area Rapid Transit Board of Directors. I was nominated to the Board by City Councilwoman Sandra Crenshaw, an African-American, and appointed by the Dallas City Council.

8. In or about 1984, DART began the process of building a light rail transit system, and expanding bus transit service in its service area. Attached hereto as Exhibit A is a true and correct copy of a map entitled LRT Starter System and North Central Extension. This map was created by the DART CADD Department and shows an overlay of the planned light rail system on the area's congressional districts.

9. Attached hereto as Exhibit B is a true and correct copy of a map entitled Bus Routes & Facilities. This map was also created by the DART CADD

Department and shows an overlay of the planned light rail system on the area's congressional districts.

10. The maps identified as Exhibits A and B make clear that the DART service area is predominantly Congressional District 30. Looking at Exhibit A, the DART light rail system appears to be the skeleton of District 30. Looking at Exhibit B the DART bus routes appear to be the veins and arteries of District 30.

11. The close relationship between District 30 and the DART service area is a logical one. The light rail starter system was designed to serve transit-dependent people; and those people are usually low to moderate income workers, who most often are minorities. District 30 includes this same community of people.

12. According to the 1990 Census, the DART service area encompasses an estimated population in excess of 2.1 million people. Thirty-eight percent (720,310) of the service area population is minority. Much of the service area is composed of minority transit routes, not only due to the relatively wide dispersal of minority residents throughout the service area, but also due to the federal definitions of what constitutes a minority route. Of all the DART bus routes, 94 serve areas identified as minority, and 31 serve non-minority areas. There are 332 individual bus passenger shelters located throughout the DART service area, of which 255 are located along routes serving minority areas. The placement of passenger shelters within the DART Service Area was accomplished primarily through satisfaction of one or more of the following criteria:

    i. History of a particular existing bus stop having fifty (50) or more passenger boardings per day;

ii. Location of a Park & Ride facility or temporary transit center;

iii. Replacement of existing bus passenger shelters, which have reached the end of their useful lifetime.

These criteria, while not defined in terms of geographic allocation, have resulted in the distribution of bus passenger shelters throughout the DART service area.

13. DART is a governmental entity, created and governed by State law. It is funded primarily by a one cent locally imposed sales tax supplemented by federal funds. The map identified as Exhibit A was created by DART because the support of elected officials is crucial to the success of DART and its light rail project. Indeed, without the appropriation of federal funds for the light rail system, DART would have no rail plan. Therefore, enlisting the support of congressional representatives is important. Further, DART shares constituents with the elected officials and it is important that DART know where and with whom it shares such constituents and how its projects impact on them. The map shows who the relevant representatives are and their relationship to DART's service area. Without a doubt, the drawing of District 30 brought together, into one district, the voters most affected by DART's light rail project. To fully comprehend the political nature of DART and its light rail project would require a lengthy narrative, therefore I will try to conceptualize it by saying that DART was born in political and social controversy, and it continues to exist in such controversy today.

14. Since becoming the congressional representative from District 30, Eddie Bernice Johnson has been particularly supportive of DART funding requests in the Congress. Her efforts in Congress have caused DART to receive continued assurances of requested

levels of federal funding for DART's light rail system, as well as its other transportation projects. DART's Draft FY1995 Financial Plan assumes federal funding will provide 35% of the money required for DART's capital projects in the first five years of the plan. At present, DART has four grant applications pending for federal funding assistance totaling in excess of $100 million.

15. Continued receipt of federal funding is especially important for the light rail's Oak Cliff line, which runs south from Downtown Dallas. Federal funds are the primary source of funding for the southern segments of the light rail system, whereas local sales tax revenues are the primary source of funding for the northern segment.

16. Due to political pressures, DART had to expend many tens of millions of dollars to build a tunnel for a segment of its light rail system rather than go through a wealthy neighborhood, even though DART owned the railroad right-of-way which had been used for freight trains. On another segment, DART had to abandon its intent to provide service to one of its eastern suburban member cities through another railroad right-of-way it owns. The inability to use this right-of-way, on which freight trains continue to operate, will cost untold millions of dollars for an alternate route, and has delayed service to a member city until well after the turn of the century. Federal regulations now expressly prohibit DART from using this right-of-way for light rail service. The commonality between these two right-of-ways is that the neighborhoods through which they run are affluent and influential, and they believed that the light-rail system would bring an undesirable element into their neighborhoods.

17. Today, opposition to light rail continues to exists in the non-minority portions of Dallas and its suburban

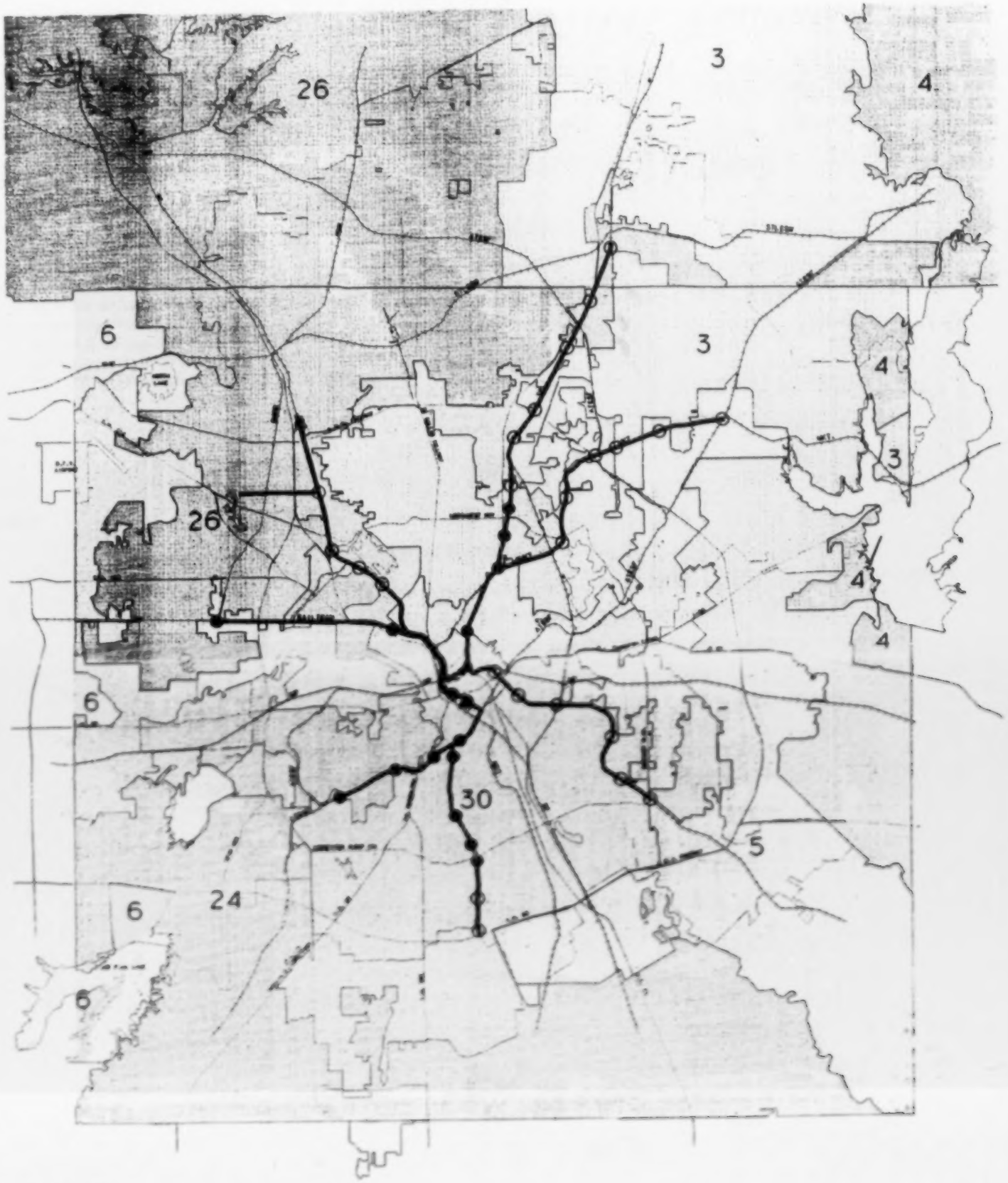
areas. That population continues to advocate for spending tax money to expand freeways and build HOV lanes in the northern areas, rather than to build a light rail system that connects them with South Dallas and Downtown Dallas. Highways make undeveloped land accessible and therefore ripe for development. In contrast, the light rail starter will travel through developed land -- except in the most southern part of Dallas. Because the northern suburban population has historically shown little interest in developing South Dallas, and because those suburban residents generally are not transit dependent, the system is not seen as useful by that population. This opposition is short-sighted, for the development of inner-city Dallas will benefit the metropolitan area as a whole.

Executed this *23rd* day of June 1994.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/
Jesse D. Oliver

LRT STARTER SYSTEM
AND NORTH CENTRAL EXTENSION



LEGEND:

- STARTER SYSTEM LIGHT RAIL ALIGNMENTS
- FUTURE LIGHT RAIL EXTENSIONS
- COMMUTER RAIL - PHASE ONE
- NORTH CENTRAL LRT EXTENSION
- RAIL STATIONS UNDER DEVELOPMENT
- RAIL STATIONS TO BE LOCATED

3 SAM JOHNSON	5 JOHN BRYANT	24 MARTIN FROST	30 EDDIE BERNICE JOHNSON
4 RALPH HALL	6 JOE BARTON	26 DICK ARMEY	

Drawn BY DART CADD DEPARTMENT

DART

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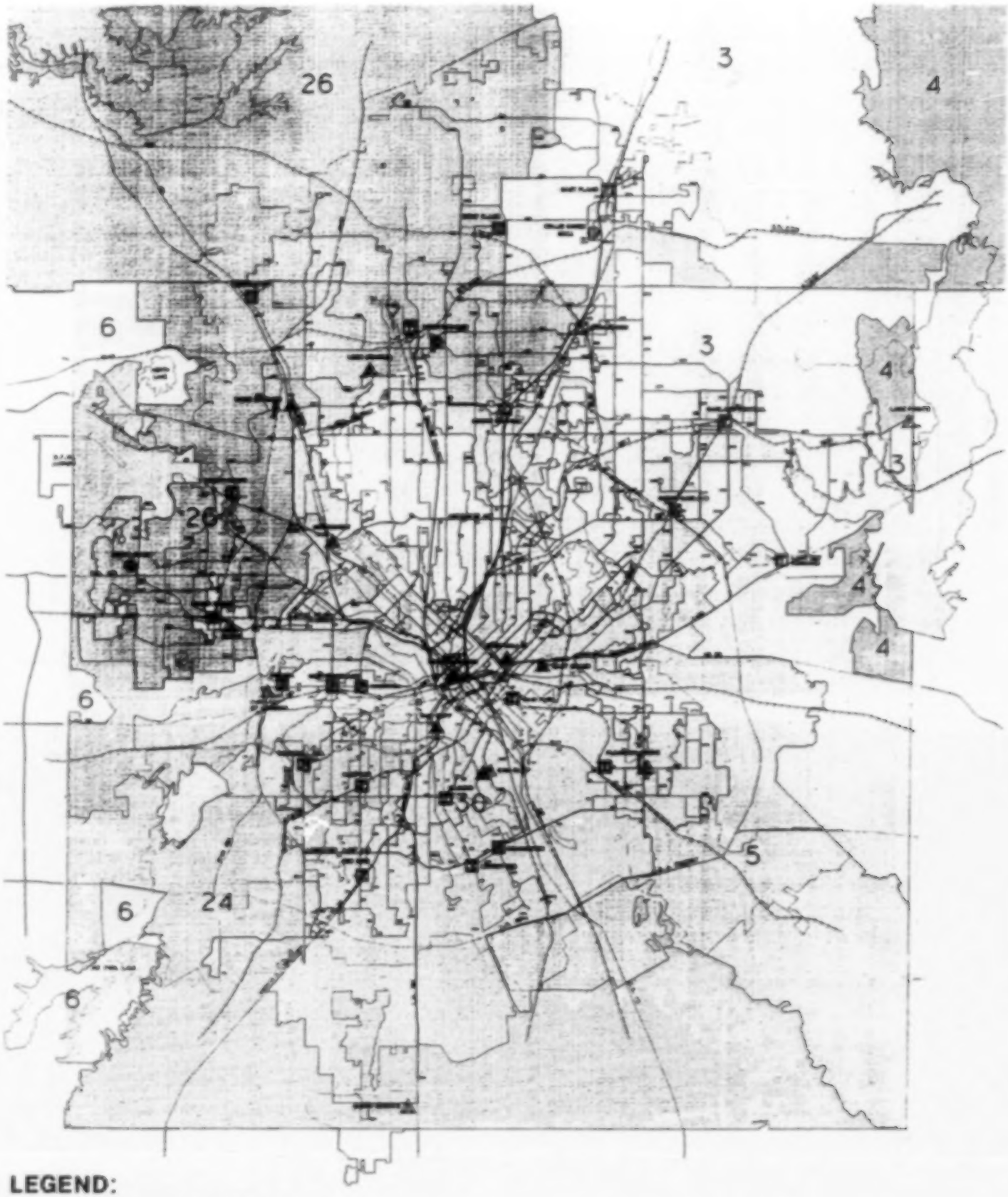
Lawson Exhibit 17
Attachment A

— EXHIBIT A TO STATEMENT OF OLIVER —

BUS ROUTES & FACILITIES



LEGEND:

- EXISTING TRANSIT CENTER
- FUTURE TRANSIT CENTER
- EXISTING PARK & RIDE
- FUTURE PARK & RIDE
- EXISTING OPERATING FACILITY
- FUTURE OPERATING FACILITY
- EXISTING PULSE POINT
- FUTURE PASSENGER TRANSFER LOCATION

3 SAM JOHNSON | 5 JOHN BRYANT | 24 MARTIN FROST | 30 EDDIE BERNICE JOHNSON

4 RALPH HALL | 6 JOE BARTON | 26 DICK ARMEY

DRAWN BY DART CADD DEPARTMENT

CAD 5

DART

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Lawson Exhibit 17
Attachment B

— EXHIBIT B TO STATEMENT OF OLIVER —

Statement of Facts Hearing on Plaintiffs' Request for Preliminary Injunction and Implementation of Interim Plan from *Terrazas v. Slagle*, heard in the United States District Court for the Western District of Texas

Excerpts from Testimony of Fred Blair, State Rep. Roman Martinez and Eddie Bernice Johnson

Dated December 12, 1991

Testimony of Fred Blair

• • • •

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DIRECT EXAMINATION

BY MR. HICKS:

Q For the record, would you please state your name and where you live?

A My name is Fred Blair, and I live in Dallas, Texas, State Representative from District 110.

Q How long have you been a State Representative?

A I was elected in 1986.

Q Were you in the Legislature when this last round of redistricting occurred?

A I was not.

Q You were not. This time?

A Oh, I'm sorry. Not in 1980 I wasn't. In 1990, yes, and 1991.

• • • •

[106]

Q Now I'd like to turn your attention to Congressional redistricting.
A Sure.
Q First, were you involved in the redistricting process -- intimately involved in the redistricting process insofar as the Dallas and Tarrant County area is concerned in the drafting

[107]

of HB1?
A Yes, I was.
Q As I understand it, HB1 is the Congressional Redistricting Plan for Texas. Has it been precleared by the Justice Department?
A That is my understanding.
Q Now, I'd like to turn your attention to District 30 under HB1.
A Sure.
Q Are you familiar -- are you familiar with that district?
A Yes, I am.
Q I guess I need to step back. I'm rushing through this. Did you testify about what kind of role you played in the House in the Congressional redistricting?
A Yes. Let me just tell you my role in the Congressional District 30 or in the whole Congressional scheme. It was presented or introduced in the Senate by Senator Johnson who held extensive hearings and worked in the community. Secondly, I was the House sponsor of that motion in the Congressional Redistricting

Plan.
Q Thank you. Turning your attention now to District

[108]
30--
A Yes.
Q -- under the House Plan -- I mean the past plan, rather, of the State, do you have a view about whether that district is a safe Black district?
A Are we speaking of District 30?
Q District 30, yes.
A Yes, I do.
Q What's your view?
A Well, I think, given how it was crafted, it was crafted in a manner that we sought to pick up those precincts, those communities, those areas that we thought were stable areas that would present an opportunity to elect an African-American.
As you know, we held extensive hearings. We had hearings back in our community.
That community itself -- when I say "our community," I'm speaking of the Black community.
They wanted nothing less than a 50 percent Congressional district. As a matter of fact, we have testimony to that effect. We had those who
came to our hearings here in Austin who testified
to that effect.
But the real -- I think the

[109]
real point that I need to make here is that, in

looking at developing a Congressional Plan, we wanted to find those areas that we thought were stable areas. Homeowners were very important to us. We wanted to make sure we included a significant number of those within a district because just to lump in African-Americans and say we have an African-American district that may have a number of apartments where there is a lot of movement going on, we thought we had to be very sure, very careful, in drawing lines so that we could create a district that we thought was winnable with a 50 percent.

If you got 65 percent, better. But, with a 50-percent district, at least we thought we had created the best opportunity that we could to elect African-Americans to congress.

Q Now, you're familiar with the shape of District 30?

A Yes.

Q Does this effort that you just described to try to find stable areas of Black voters, stable areas of Black population -- does that have anything to do with the less-than-perfect-circle or perfect-square configuration of District 30?

[110]

A Absolutely. If we could just draw the entire Dallas County into one district, then I would think we would minimize and reduce the percentage.

But we created a district that we thought, under the circumstances, that would give us the strongest district.

Not only that. We had to look at another factor. We wanted to make sure that the districts that were left, the African-Americans that were not included in District 30, would be a district that they would have a significant impact upon who was going to be elected.

As you know, not only must we create districts where an African-American can win, but when we have more than enough, if we're not packing districts, we have to make sure that the districts that are left are impact districts in which we can have a significant influence or impact upon who is going to be elected where our votes will really count. And that's what we did with the districts that are left that are drawn around those districts.

Testimony of State Rep. Roman Martinez

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[123]

Q. Would you state you name, please, sir?
A. My name is Roman Martinez.
Q. Are you currently an elected member serving the Texas Houston of Representatives?
A. Yes, sire. I'm the State Representative from District 148 in Harris County.
Q. And for how long have you been a State Representative?
A. I'm on my fifth term.
Q. And are you a member of the Mexican-American Legislative Caucus?
A. Yes, I am the vice-chairman.
Q. And are you indeed a Mexican-American citizen?
A. Yes, I am, all my life.
Q. Were you involved in the redistricting -- you're going to offer testimony both on the House, Senate and Congressional redistricting as offered by the State to this court; are you not?
A. Correct.

* * * *

[125]

Q Now, the -- there has been a fair amount of testimony about the fact that there are several

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VTDs cut in the process of drawing lines, whether they be House, Senate or Congress. In the drawing of the Harris County House lines, did you, in fact, have to cut VTD lines?

A. We did. We cut a lot of VTD lines, the reason being was that, first, the technology allowed us to do so becaue we had the data available. Secondly, I felt that it was more important and I stressed to the Redistricting Committee and then to the House of Representatives that Harris County, particularly in the past precincts and a lot of times VTDs, were based on precincts. Precincts in Harris County have never been based on Hispanic populations. They've been based on Black and Anglo populations. So, it was very necessary to go into the block level to be able to cut in and bring in Hispanic neighborhoods in order to maximize Hispanic Representation, really, at all levels, both the House, Senate and Congressional.

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Q. Next, let me turn your attention to the U.S. Congress. Were you involved in the drafting of the lines for the United States Congressional seats in and around Harris County?

A. Yes, I was. I pretty much was also the architect of the lines for the Harris County area.

Q. And, if -- if you will, tell us what the -- what process you followed, what were your goals and what were you trying to accomplish?
A. Again, the first goal was to assure no retrogression for the 18th Congressional District, insuring that that was maintained as an African-American district. And then, secondly, it was a very important goal as a Hispanic representative to insure that we created for the first time a Congressional seat for the Hispanic community to elect the first Hispanic Congressman.

[135]
Q. And, in you opinion, does the House Bill 1, which, I believe, is the Congressional Plan -- does it provide an opportunity for a Hispanic Texan to be elected to the U.S. Congress for the first time from Harris County?
A. I believe it does.
Q. And do you have an opinion as to whether or not the Congressional lines as drawn on House Bill 1, first, as to Harris County, are fair to minority Texans?
A. Can you repeat that?
Q. Sure. Do you believe that the Congressional lines as draw --
A. For the whole state?
Q. Well, first, as to Harris County are fair to minority citizens residing in and about Harris County?

A. Oh, yes. As I mentioned, I was the one that was the architect for that plan and I believe that we made all assurances to make sure that the Hispanics were maximized in -- in that district and, also, Blacks in the 18th.

Q. Likewise, on a statewide basis on the Congressional Plan, do you have an opinion as to whether or not the Congressional lines, as drawn

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statewide, are fair to minority Texans?

A. Definitely.

Q. Have you had any opportunity to review the plans offered by the Republican Party as it pertains to the U.S. Congressional lines?

A. Yes, I have.

Q. Have you reviewed the State Plan versus the Republican Party Plan in Harris County?

A. Yes, I have.

Q. And briefly tell us what that review shows.

A. I feel that the district has created a so-called Hispanic district for Harris county and would not be able to elect a member of the Hispanic community to Congress because, again, it falls short in terms of percentages.

Q. By that, are you saying that the district that is offered by the Republican Party in their plan as a district that would elect a Hispanic member to the U.S. Congress, in fact, will not do so?

A. It would not.

Q. And does that mean that the Mena Plan -- excuse me, the State Plan for Congressional redistricting, in your opinion, will provide a Hispanic member to the U.S. Congress from Harris County while the Republican Party Plan will not?

[137]

A. Definitely. And let -- let me expound on that a little bit. Again, for the Congressional Plan we did allot block cuts and we brought the Congressional district up over 60 percent in terms of Hispanic population. That's very, very important in Harris County because of our registration levels.

We needed to insure that we had a certain percent of population to make our community feel the momentum enough that we would be able to elect a Hispanic and the Republican Plan does not get up to the percentages at all that we would need.

Q. And, likewise, have you had an opportunity to compare the Congressional Plan of the State on a statewide basis compared with the Republican Party Plan on a statewide basis such that you could offer an opinion as to which of those two plans you believe is more fair or the most fair to minority Texans?

A. Yes, I have. And, again, I do believe that we in the Legislature wanted to insure that definitely the three new Congressional districts that Texas

was gaining were going to be -- were going to elect minorities and our main emphasis was to try

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to make sure that the Hispanic distirct in Harris County was going to elect a Hispanic and that the Black district in Dallas was going to elect one. And I think that the plan that we passed in the Legislature does that, while the plan that the Republicans drew up would not elect a Hispanic in Harris County and would not elect a Black in Dallas County.

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[139]

Good morning, Mr. Martinez. I'm John McCamish for the Texas Fair Redistricting Committee. I'm going to ask you just a few questions. I understand, Mr. Martinez, that you're not going to run for your House seat again?

A. Excuse me?

Q. I understand that you're not running for re-election this time?

A. That's correct.

Q. All right, sir. What are you going to do, sir?

A. I'm contemplating right now running for United

[140]

States Congress or State Senate.

Q. All right. Which Congressional district would you contemplate running in, sir?
A. The 29th.

* * * *

[143]
Q. Thanks. Now, with regard to the House Plan, sir, here -- here again, did all -- did all the members of the Houston Delegation vote for -- all the minority members vote for the Harris County Plan?
A. I believe one did not.
Q. Is that Representative Wilson?
A. Yes.
Q. And he's a Black member of the Harris County Delegation; right?
A. That's correct.

[144]
Q. All right. Did all -- did all of the minority members of the House vote for HB1, the Congressional Plan?
A. I do not recall.
Q. I believe there was somebody -- where was Representative Edwards from?
A. He's from Harris County.
Q. Harris County. Did he vote against the Congressional Plan?
A. I'm not aware.
Q. Do you have any -- do you have any -- aware of any reason why he would be adverse to the -- to HB1, the Congressional Plan?

A. He never came and testified in the Committee as to objections, nor did he speak in front of the House on his objections, so I do not know -- I do not know why he would have voted for or against it.
Q. You never talked to him about that?
A. He never came and talked to me about his objections, no.
Q. Did you ever talk to Representative Wilson as to why he was adverse to the House Plan?
A. Representative Wilson and I worked closely together on redistricting, since he was a member of the committee.

[145]
Q. But, he voted against your plan; didn't he?
A. If I recall, yes.
Q. Do you know why?
A. I'm sure he had good reasons that he voted against it.

MR. MCCAMISH: No further questions.

Your Honor. Excuse me. I do have one more. I want to get the Congressional maps.

BY MR. MCCAMISH:
Q. This is Exhibit 83A. Representative Martinez, I'll represent to you this is Plaintiffs' Exhibit 83A for identification. It is the -- as you can see, HB1 from the Attorney General from the State of Texas.

A. Right.
Q. This is the map; can we agree on that?
A. That's correct.
Q. All right. Now, which Congressional district are you contemplating running in, sir?
A. District 29.
Q. And that would be this district right here (indicating)
A. That's correct.

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Q. All right, sir. And it's -- let's see. Compared with the currect district then, it comes into the city and spreads out up here (indicating); is that right?
A. It's a district that tries to maximize Hispanic voting population in Harris County. It's a district that I created at 61 percent Hispanic, yes.
Q. All right. Are there any other Hispanic districts -- Congressional districts created by this map?
Q. No. There's an African-American district, the 18th, that's created at a 50-percent Black population.
Q. Currently held by Congressman Washington; right?
A. That's correct.
Q. All right. Did you take any Black voters out of his district?
A. We added Black voters to the district.
Q. Did you take any out?
A. Black voters?
Q. Yes.
A. Out of his district?
Q. Yeah.

A. No, did not.
MR. MCCAMISH: Okay. Thank you

[147]
very much. We have no further questions.

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[155]
FURTHER CROSS-EXAMINATION
BY MR. MCCAMISH:
Q. I believe you said, Mr. Martinez, that no Blacks were taken out of Mr. Washington's district to create the Congressional district that you are

[156]
contemplating running in. That's what you said; did you not?
A. Significant Black population.
Q. Did you take any Hispanics out of Mr. Washington's district?
A. Oh, definitely.
Q. How many did you take, sir?
A. I don't know the exact number. But when we first started out the process, Fred Washington's district was more Hispanic than Black.
Q. Okay. Now you've created a district that -- 29 is 71 percent Hispanic; is it not?
A. 61. 71 combined population, Hispanic and Black, but it's 61 percent Hispanic; is it not?
Q. I see. I'm beginning to understand my numbers

now. I take it, then, you took approximately 167
Hispanic voters out of the 18th district. Does that sound about right?
A. 167?
Q. 167,000.
A. I'm not sure what the actual number was.
Q. It's a fact --
A. But we had to take Hispanic population from the
18th to be able to create the Hispanic district.
That's correct. We took Hispanic populations from

[157]
pretty much every single Hispanic -- ever single
Congressional district in Harris County to create
this new Congressional district.
Q. And you took 20,000 Black voters out of 18, too;
didn't you?
A. I'm not real sure where they came from. But if
you -- if you -- you know, I can assume that there
probably were some Black voters that were in the
18th that got placed in the 29th.
Q. Okay.
A. So, again -- again, we made very -- you know, it
was one of my goals to insure that we did not have
retrogression in the 18th -- and I'm pretty
confident we did not -- and that we created a

district where African-Americans have maximum
effort to insure that the 18th remains an African-Americans district.

Q. Thank you, Mr. Martinez. I appreciate that. But, then, when you told me when I was standing up here the first time that you didn't take any Black voters out of Mr. Washington's district, you were wrong; weren't you?

A. Well, I mean, significant. There -- there -- not enough to retrogress.

Q. 20,000 is not significant?

[158]

A I don't believe so.

MR. MCCAMISH: Thank you.

MR. GRAY: I have nothing

MR. SIBLEY: Nothing further.

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Testimony of Eddie Bernice Johnson

* * * *

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DIRECT EXAMINATION

BY MR. RICHARDS:

Q Could you give us your full name, please?

A My name is Eddie Bernice Johnson -- Johnson.

Q And where do you live, Mrs. Johnson?

A I live in Dallas, Texas.

Q And you are a member of the Texas Senate; is that correct?

A I am a member of the Texas Senate.

Q When were you first elected to the Texas Legislature?

A In 1972, I was elected to the House.

Q And that was from the first single member districts that were created in Dallas County in 1972?

A That is correct.

Q And as we talked at lunch, the districts, I guess, were actually drawn by Dan Weiser; is that correct?

A That's correct.

Q You were elected to the Texas Senate in 1986; is that correct?

A Yes.

Q And became the first Black African-American to serve on the Texas Senate in Dallas; is that

[231]

correct?

A Yes.

Q What role did you play in the 1991 redistricting of the Texas Congressional seats? Did you have a role?

A My assigned title was Chair of the Subcommittee on Congressional Redistricting.

* * * *

Q As far as Dallas was concerned, was there one dominant or dominating goal, as far as Congressional redistricting?

A Yes. I had made a commitment to that Black community, that they would have a safe district, as had been mandated and expected for a number of years, and I did not intend to home without that.

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Q As far as you were concerned, was that your dominant role as far as Congressional redistricting?

A My goal in Congressional redistricting was to be sure that minorities had the maximum number of seats that they could have. I felt an obligation,

since I had that assignment at that time.
Q Were there -- Did you conduct Hearings, both in
Dallas and elsewhere, with respect to the
development of Congressional Redistricting Plans?
A Yes; I did. And we took plans out. We went to
communities within the areas. And we had an open
office policy. I saw everyone, regardless of
party or where they were from.
Q All right. With respect to a Dallas county -- the
Dallas County Congressional district which came
into being as Congressional District 30, that's
what now is, I guess, being characterized as the
Black dominated Congressional district in Dallas;
is that correct?
A Yes; that is correct.
Q What -- In attempting to create Congressional
District 30, as it appears in House Bill 1, what
were your principal goals in that district? I
have put it up there on a map so you could see it

[233]
A Yes. We were attempting to be sure that is was,
indeed, a safe Black district.
We were looking not only at

what had been called a core Black community, but the performance of those persons in that area and, too, we were looking at the growth which we followed. May I get up and view this map?

Q Sure. Yes. As a matter of fact, that would be --

May she get up? Is that away from the mike? Would that be all right?

A This map, we take very seriously because what we had to consider is the older core community had substantially deteriorated in population, much more so than what we had anticipated when we were looking at the population prior to getting the census data.

Q When you say they deteriorated, what do you mean in that respect, Mrs. Johnson?

A Well, the populations had moved -- started to move out; there were lot of boarded up houses. The whole core of that area was moving out. There had been a deterioration of about 40 to 45 to 50 percent in certain areas of voters in a 10 year period.

In addition to that, there were

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a large number of persons there who were felons,
who could not vote. So, though they were over 18,
it substantially deteriorated their voting strength.
We then attempted to locate where that population shifted to. And in attempting to trail that -- to trace that population, we could see that it was moving outer and around. It was going into the Grand Prairie area and into the Pleasant Grove area. And then there were pockets of persons who had lived here, and then this was moved --

Q Who lived in the Black core district?

A -- who lived in the core district, and also in the north end of Dallas County, into Collin County. Those were performing voters who expressed a desire to be in the minority district.
We especially had groups to come and say that they had been in a cluster all these years and never felt that they had representation, and requested to be in the district.

Q Well, to the extent then that we see fingers of the yellowing district going off in the north --

north Dallas County, and even into southern Collin

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County, I suppose, we are talking about these are Black migration areas that you were attempting to bring into the district; is that correct?

A That is correct.

Q Now, is it your testimony that, in fact, the people who lived in those communities, in the north part of Dallas County, requested to be placed in what was destined to be a Black Congressional area?

A. Yes. They were requesting to be in the safe Black district.

Q An area I remember from my days in Dallas was Hamilton Park, which has been a long time middle class Black neighborhood in relatively far North Dallas; is that one of the areas, for example, that --

A That is correct. And some of those residents had started to move up Court Road and into the Collin County area and over. So, we had lots of testimony from those persons.

And then since that time, I have had lots of honor and lots of congratulatory letters because they finally feel that they are going to be in a district where they will be

represented by their views.

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Q Now, I think County Judge Jackson testified that your Congressional -- I believe he testified and perhaps he didn't -- that your Congressional District Plan, as he saw it, destroyed communities of interest in Dallas County. What is your comment to that, in terms of Congressional District 30? Do you see it as preserving the Black community of Dallas County?

A Yes. When we looked at the Law, the focus was on the individual voter. As a matter of fact, we saw in the Law where it prohibited using political subdivisions as a barrier.

What we looked at is individual voters and their protection. Their community of interest was going to be clustered with their own so they can feel free to elect someone of their choice.

We were looking at individual voters and their performance so that it could be safe.

It was clear by any research, any kind of historical, clear picture, that it was not really a correlation between the Black voters and, really, any other voter in Dallas County.

And, so, it was clear that the

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demand came from the community itself, that

they
wanted a safe Black district without having to build coalitions. They feel that they had had to go through that, they couldn't elect their officials, and this time they wanted it. The anger had existed in that community now for a clear 10 years. They were making that very clear
demand. There was no question about it.

Q Well, is it fair to say that the plan that emerged as Congressional District 30, as far as you see it, it was a direct response to the demand of the Black community in Dallas County?

A Yes.

Q You had a target, I believe, others have testified
to and I guess we had earlier today, that the target was to ensure, what, that 50 percent Black
voting age population? Was that -- was that -- what was the target, I guess I should ask you?

A Well, the target was to be sure that the district was at least 50 percent Black populated, with a substantial percentage of those over 18 years old,
and were in a shape to vote. Because in the older, deteriorating neighborhoods, where many of
the low income people are clustered, there were a
large number of people over 18 that could not

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vote, that had their voters' rights removed.

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Q Were you here in the courtroom a moment ago when Mrs. Wyatt from the Republican Party testified that -- along the lines that your Congressional Plan in Dallas County dilutes Black votes in Dallas County? Did you hear that testimony?

A Yes; I did. But I don't agree with that. I don't know what her analysis is.

But I can tell you that we have analyzed this area many times, because I knew that for me to have to take it to the Senate floor and

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defend it against the people that have tarred me and feathered me, but I was too weak to run, there was no way that I could do that without knowing for sure what was there and why it was there.

Q Is it too -- is it premature to ask you whether you intend to run for Congress in this district? I'm not sure.

A I do indeed intend to run. Although, let me say to you that that has been introduced to me as an idea since 1974. It is not new, nor was this district for me.

And that was a battle I also had to fight. I kept clarifying -- I kept being told, "You don't need that many to win." Well, it was not for me. It was for the community. I will take my chances with the voters. But it was for that community, their input.

The first map that we unveiled

did not have that percentage of Blacks. The community demanded more. And that's why we went looking for more. And we were looking for voters who were voting.

Q And that looking for more Blacks and putting them in the district and putting in performing voters, that's what explains the configurations of the

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Congressional District 30 in Dallas County; is that correct?

A Yes.

* * * *

[247]

Q Now, looking up here at your District 30, under House Bill 1 that we have just looked at, I believe it has a 50 percent total Black population and an a 47.1 percent voting age population. Does that sound right?

A Yes, sir. It sounds good to me.

Q All right.

A Well, you see, they brought me one that was 39 percent initially.

Q Uh-huh. And I believe that you had occasion to testify with regard to this Bill; did you not, in front of the Senate Committee?

A I did a lot of talking, Mr. McCamish.

Q And I think at one time you referred to this map as "bacteria."

A No, I didn't say it was bacteria. I said it

looked like bacteria growing. But that's just where we live.

Q All right. Now, was anything done in the course of the creation of this map, Mrs. Johnson, that you could tell us about, to aid Congressman Bryant or Congressman Frost? Or did this map just happen this way?

A I got beat up so many times because I wouldn't do anything but look out for Black voters.

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Q. Now, in fact, you gave up Black voters to vote Congressman Frost and Congressman Bryant; did you not? And this is what caused you to move as far north as you did?

A. We were looking for performing voters. We were looking for voters who vote.

Q. You wanted to give them the nonperforming ones; is that it?

A. We would rather not have those, if we had a choice.

Q. And so, you gave them to Congressman Frost and Congressman Bryant?

A. Well, whomever came in there and got them, they could have them, after we got the better ones.

Q. So, you sort of picked the ones you wanted; though?

A. Yes, sir.

Q. I see. Now, would it have been easier to create minority districts if you hadn't had to worry about all the incumbents?
A. Well, you know, I guess 20 years ago that would have been the case because all these performing voters would not have been as disbursed if we had had that district in place. But, you know, they moved around. So, we had to go pull them back

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together.
Q. I believe your answer to Congressman Bivins was -- and correct me if I'm wrong, was, "Oh, yes, and we would get 30 Democrats, too." Do you recall that?
A. And we would do what?
Q. If you didn't have to pay attention, if you really could just pay attention to incumbency and not have to worry about minority community?
A. You know, I might have said that because I say a lot of things in jest, just like Senator Bivins does.
Q. Uh-huh.
A. He called me Congresswoman today.
Q. All right. Now, let's turn our attention, if we could, and I don't have the map up here, but you recall the way the Congressional map is drawn over in Tarrant County?
A. Yes. I have it.

Q. All right. And did you participate in the drawing of those districts over there?

A. I participated some. But Representative Garfield Thompson had input. And we respected that. But I participated especially in attempting to bring that minority impact district together because I felt that we should prepare and allow for the

[250]

opportunity for that Hispanic growth.

Q. But isn't it a fact, Senator, that the map -- and this is HB1 now, the map that you supported, in fact, split both the African-American community and the Hispanic communities?

A. Well, it doesn't really split the communities. What it does is takes out two or three precincts And Representative Garfield Thompson came and asked me to agree to that. And he lives over there and it's his area, and the community -- the majority of the community people over there said it was okay. So, I respect that people know what their communities are like when they represent them.

Q. Your Honor, may I approach the Witness?

Senator Johnson, would you just help me along here? I'm going to read Senator Bivin's question, and I would like you to read the

first sentence of your answer, and we have got it
all here in yellow.
A. Sure.
Q. All right. "Senator, in your map in Tarrant County, you are splitting both the African-American and the Hispanic communities in half. And this way, we put them together." What

[251]
was your answer?
A. "This is right, because that was the demand that was made by the speaker."
Q. Thank you.
A. You didn't let me finish.
Q. I just wanted to handle the yellow ones. I don't think there was anything else there that was particularly interesting.
Now, what did the Speaker --
the Speaker made a demand of some kind on you.
Would you tell us what that was?
A. He was wanting at least 75 percent of the population within Tarrant County to be within a district linked to a majority in Tarrant County. He said it didn't make any difference to him about the ethnic group. He was just looking out for Tarrant County population remaining together.
Q. And it's fair to say, you looked out for the Speaker?
A. No.
Q. Didn't you?
A. No; I did not. We were on opposite sides. We

finally made a little compromise because Garfield Thompson came in. The Democrats did not think I was very nice. And they didn't treat me nice.

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Q. One last question, Senator: I'm very, very curious. Which Republican Congressman said that that 30th District that you drew was good?

A. They didn't comment on the 30th. They were talking about the one they got.

Q. Oh; the one they got?

A. Uh-huh.

Q. I see. And the ones --

A. As a matter of fact, I haven't heard any lately comments from them.

Q. Well, I don't think any of them ended up with less than 70 percent Republican district; did they?

A. They seem to like them. I don't know what's in them.

Q. I bet they do.

* * * *

FURTHER CROSS-EXAMINATION

BY MR. SIBLEY:

Q Senator Johnson, how are you doing?

A Okay, fellow Wacoen.

Q Good to see you again.

I heard you say over and over again during the course of this -- and by the way, we served on that committee together. You were

the chairman of that committee -- you would say

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repeatedly, "If you can draw a minority district, you must draw a minority district."

A Excuse me?

Q You said over and over, "If you can draw a minority district, you must draw a minority district." Did I understand you to say that during the course of these deliberations?

A Yes, sir.

Q So, this then would be an outgrowth of that policy; is that correct?

A Yes, sir.

Q Now, I won't describe it as bacteria but you would say then that this executes that legitimate State; interest. Is that correct?

A It -- it executes the interest of those voters. See, in my judgment, the Voters Rights Act protects voters -- not land, not boundaries -- other than the State line. It's not a residential requirement. It clearly states that it protects an individual voter.

Q Right.

A And gerrymandering is permitted, as long as it's to enhance the enfranchisement of the minority voters. And in Texas, it covers both Hispanics and Blacks.

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Q So, gerrymandering to draw a minority district is a legitimate State interest; is that correct?

A Yes, sir.

Q And you would say then that this carries out that legitimate State interest; is that correct?
A Yes, sir.
Q Was this -- does the same principle apply to the drawing of Senate district lines? If you can draw a minority district, you must? I mean, it's not a tricky question. I'm not trying to fool you.
A Well, yes. That's my interpretation of the Voters Rights Act.
Q So, you would say that the same legitimate State interest applies to the drawing of Senate districts, as it does to the drawing of Congressional districts?
A Yes, sir, except that there are a few rules of Law that are different because of it -- the State laws govern the Senate seat, and the U. S. Constitution Voters Rights Act governs the Congressional one.
Q So, did you draw this district?
A Which one?
Q The yellow, Number 30; did you draw that?
A 30, yes, sir. Yes, sir. I -- Well, along with my staff. Yes. I sat in the computer room and we

[255]

found those Blacks where we could and put them together.
Q Are you happy with that district?
A Well, it accomplishes the purpose. And that's where they live. And they vote and they are

happy.
Q Are you happy with that district?
A Yes, sir. I can live with it.

* * * *

Appendix 1 of Plaintiffs' Memorandum in Opposition to the Motion for Continuance of the State Defendants, submitted May 18, 1994

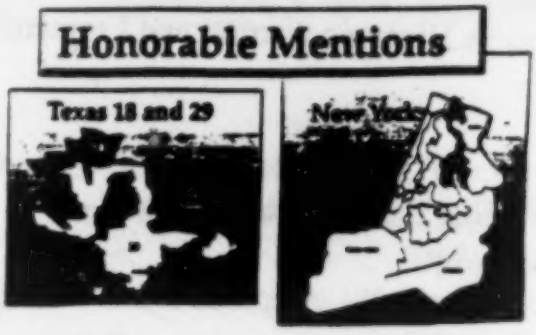
Page 16 ROLL CALL Thursday, October 24, 1991

Gerrymander
Contest Winners

After a last-minute flurry of entries in our gerrymander contest for the weirdest-shaped 1992 districts, we've settled on three winners and two honorable mentions. First prize goes to A.J. Pate, a manufacturing company executive in Houston, Texas, who submitted the proposed 30th district of Texas. The second prize winner, who submitted a version of New Mexico's 3rd district, is Bruce Donisthorpe, an aide to Rep. Joe Skeen. And third prize went to Terry Schaff, a staffer on the Merchant Marine and Fisheries Committee, for his map of North Carolina's new 2nd district. All three receive a Rand McNally Illustrated World Atlas ($79.95 value).

Honorable mentions went to Martynas Ycus, a staffer to Rep. Jim McDermott, for his "yin-yang" entry of Texas's new 18th and 29th districts and John Hambel of the Energy and Commerce Committee for New York's proposed 17th district.

1
Texas 30
New Mexico 3
2
North Carolina 2
3


Honorable Mentions
Texas 18 and 29
New York

Excerpt from Deposition of Kenneth Powers from *Vera v. Richards*, heard in the United States District Court for the Southern District of Texas

Dated April 26, 1994

* * * *

[40]

* * * *

Q. Did you follow the details of the politics of the congressional redistricting effort in the State Capitol when it was being done?

A. To a small degree. I think my -- when it was happening, I wasn't as, I guess, politically involved or aware as I am now. A lot of my knowledge I think has been gained recently, but I remember. I remember especially when they created the 29th Congressional District that that was going to be Hispanic district; and I remember, at that

[41]

time, feeling that that was wrong.

Q. Because why?

A. Because, again, it's a separation based on race, which I think is wrong.

Q. How did it separate? Did the people in the 29th District -- they still live where they lived before it was a district. Right?

A. Sure. But we've got some neighbors in the - you know, where the borders -- the 29th and the 18th, it literally goes from house to house, from block to block, from one side of the street to the other side of the street, because, you know, the person who lived there at the time of the -- I don't know -- the census, I guess. I don't know how they got their information, but if -- you know, if one guy's name was Hernandez, he may have been put in a different congressional district than the guy directly across the street or even his next-door neighbor.

Q. And you think they did that kind of house by house?

A. Yes, I do.

Q. By "they," I mean the Texas legislature?

A. Yes. Uh-huh. So it divided the community in that sense.

* * * *

[43]

* * * *

Q. Is this the first time you've ever been involved in a redistricting kind of lawsuit?

A. Yes.

Q. What is it, in particular, peaked your interest at this point, rather than sometime in the past?

A. I don't know. As I've said, I've gained a -- more of a political awareness. I knew when we were working on -- in the congressional campaign and through my volunteer

work that something was wrong because when we'd -- people would call and ask for their voting locations, and you'd have to get down to the specific address of the person. You couldn't know, you know, what part of town they lived in or -- "Well, if you are south of this point and west of this point, then you are in this district."

[44]

We had to go specifically house by house; and, in some cases, the locations are done on an even and odd basis, you know, to me which is telling me one side of the street or the other. Just from that experience, I thought, "This isn't right." These are neighbors that are being -- you know, I felt that neighbors ought to be in the same congressional district, so I think when I started hearing people being shifted to new voting locations and having new representatives and a lot of times they were very frustrated. Sometimes they were outraged. And, at that point, that's when -- that's, I guess, when my interest was peaked.

Q. Outraged at being put into a different district than the one they had been in, say, for the last ten years

or so?
A. Yes. 10, 20, 30 years, yes.
Q. But you understand that that happens every redistricting, don't you? That somebody -- some people end up in districts that they weren't in before?
A. Right. But I don't -- to my knowledge, in the past, you wouldn't have your next-door neighbor voting in the same place you had voted in for the last 30 years while you have to go, you know, down the street to another polling location. That is what people were outraged at.

* * * *

Excerpts of Deposition of Eddie Bernice Johnson from *Vera v. Richards*, heard in the United States District Court for the Southern District of Texas

Dated June 13, 1994

* * * *

[32]

A Except we made an effort to put communities of interest together in this district. we made an effort to identify voters that would support the same kinds of major issues in the same manner, notwithstanding their color.

* * * *

[40]

Q But these objective groups would be another good standard for determining whether it's a lesser of two evils for an affirmatively supported candidate?

A All you have to do is go ask them.

Q Ask who?

A The voters. They will tell you.

Q I don't know if we have that choice during this litigation. I'm looking for other standards that may exist. In -- I'm sorry.

A I was just about to comment and probably I

[41]

shouldn't even do it, but you see, I get calls from people

that live all over Texas and other states as well that feel
that they don't have representation other than to call me
because the people that represent their districts do not
represent their views, so they will tend to call members of
the Congressional Black Caucus, and I think you might have
heard that members of the Congressional Black Caucus are
thought of by black voters in this country as being their
representatives whether or not they live in their districts.

Q Would that be true in Dallas County, regardless of whether they're in your district they call you, a large number of --

A Yes.

Q Even those that were put in Representative Frost's district and Representative Bryant's district?

A Yes.

* * * *

[51]

THE WITNESS: If I remember correctly -- I would have to check just to be sure -- but I think our first official meeting where we laid out a plan, which probably might have been this one, was May 10th of '91. There was lots of reaction to the plan and we

did get a number of calls from around the state. Generally speaking, we didn't have a lot of objection by minority voters, but there were others who had comments and especially it was comments from Martin Frost.

BY MR. HURD:

Q. What kind of concern was there from Martin Frost on this particular district?

[52]

THE WITNESS: That his residence was not in the district that he had represented for those years and we had attempted -- we had written three letters to each member of Congress to get their home addresses. Some responded, some did not.

we checked tax rolls trying to find them. We attempted -- the ones we had, we attempted to be sure that they were still in the area and this was not just demographics, it was everybody, where they had voting residences.

we missed some because we didn't have the residences and that was primarily the target at the time, that some of them were not --

BY MR. HURD:

Q. At that point in time did he voice any concern to you about the relative level of minority citizens within

[53]

his district?

A. He talked about losing a lot of the people he had represented previously.

* * * *

[55]

Q. Do you know a gentleman named Robert Menscher or Bob Menscher, do you know him?

A. I've met him, yes.

Q. Who did he work for during the districting process?

[56]

A. Martin Frost.

Q. Do you know if he works on Capitol Hill right now?

A. I assume he does. I have not seen him but one time since I've been up here and I think that was last January.

Q. Was he actively involved in the districting process on behalf of Congressman Frost?

A. Yes.

Q. What role did he play in dealing with the committee and dealing with plans that were released in a general sense?

A. Well, he was there working as hard as he could to preserve an incumbent's district, just as many others were.

* * * *

[64]

If you recall, can you remember roughly in the process of districting when it became a viable possibility to create both a Hispanic district and a black district in Harris County?

[65]

A. They already had a black district --

Q. Correct.

A. -- which was protected by the Voting Rights Act. The population growth in the state indicated where the population centers of growth were and they were Harris County, San Antonio, the South Texas corridor and the Dallas/Fort Worth corridor where the tremendous growth occurred, so it was clear whatever seats came about they would be in those areas. The dominant population growth in those areas were Hispanic and so it became sort of a natural for that population.

* * * *

[74]

Q. When you were chairman of the committee was it your intention in the process of developing these districts to allocate the minority population into particular districts such as this?

A. We had a goal of attempting to maximize the

election or the representation according to the dictates of
the Voting Rights Act of the minority voters.
Q. So that's no accident, that was an intentional allocation of minorities into a particular district?
MS. HAIR: Wait a minute.
MR. HURD: I'm asking.
BY MR. HURD:
Q. Was it an accident as far as you're concerned?
MS. HAIR: If she knows.
THE WITNESS: Frankly I don't know, because on
this part of the plan the incumbents did most of the

[75]
architecture.

* * * *

[82]
THE WITNESS: Rather than cracking it off I think I was not able to include it in 30.
BY MR. HURD:
Q. Why those voters, when they're minority voters and could have been included in the minority district?
A. Because I was dealing with incumbent office holders and there was a lot of emphasis on incumbency.
Q. Why did 5 need minority voters?
A. 5 wanted voters that they had previously represented, just as 24, just as 6, just as 5, just as everybody that had a stake in it.
Everybody wanted as much of what they had previously represented as possible on both sides of the

15 political spectrum.

* * * *

[99]
21 Q They were allocated to a particular district --

[100]
1 A. Because the incumbents wanted it.
2 That was basically how they got allocated.

* * * *

21 THE WITNESS: I don't even know what areas were

[101]
1 minorities on some of this. Incumbents came in and worked
2 the parts of the map that they desired and if it worked in
3 the total picture that's what we did.
4 We basically attempted to satisfy these
5 incumbents.
6 BY MR. HURD:
7 Q. These lines did that, to the best you can
8 cumulatively --
9 A. To the best we could do in terms of what they
10 desire, and when it came to the sparsely populated areas
11 with minorities where there was no outcry for minority
12 representation, where the population did not support it,
13 there was not that much attention given to what is minority

of whatever in those areas except as incumbents wanted
certain areas geographically.

* * * *

[102]
This doesn't have anything to do with minority representation as far as district construction, this has to
do with incumbent drawing of lines in these areas?
A. It has a whole lot more to do with incumbency than anything else.

* * * *

[105]
Q. I'm going to hand you Plaintiff's Exhibit 6 that professes to be a narrative of Voting Rights Act considerations prepared by the Texas Congressional
Redistricting Staff.
Would that have included your staff?
A. Yes.
Q. What do you recall about the preparation of this document, if you do recall anything?
A. Yes, all of the staff was involved with this, the subcommittee staff as well as the full committee staff.
Q. Who would the full committee be? Is there a

[106]
Senate districting committee that had the two subcommittees
or was it a committee of the whole?
A. A committee of the whole.

4 Q. So was this a cumulative work of all the staffs,
5 is that what you're indicating?
6 A. Yes.

* * * *

[108]
13 Q. Right. Were some of those areas divided by
14 blocks so that they could be distinguished?
15 A. Well, what we also looked at is voting patterns
16 and voting patterns were just as easy to get as ethnic
17 background in the data.
18 If the voters voted in the Democratic Primary it
19 was bright blue, if they voted in the Republican Primary it
20 was bright red, and there's shades in between.

* * * *

[113]
12 Q. Did any of the incumbents, Frost, Bryant, to
13 name two, ever affirmatively indicate to you what racial
14 composition they wished for their district?
15 A. No, not percentagewise. They really just came
16 out and wanted to maintain some of the district, as much as
17 they could of the existing districts that they had
18 represented.
19 Q. Do you have any reason to believe that they
20 would have been satisfied had they been left all of the
21 white citizens but none of the minorities?

[114]
1 Would that have satisfied them, if you know?

A. Based on my experience, I'm not sure that they would have been satisfied because the districts that they represented previously were not all white and they basically wanted to maintain as much of their previous districts as they could.

Q. Did that include a desire to maintain the racial composition of that previous district, if you know?

A. Well, there was not so much focus on the racial composition. There was more focus on what they had previously represented. They wanted to maintain as much of what they had previously represented as possible.

* * * *

Q. If you know, did they or their staff ever

[115]

represent to you that they wished to maintain a 25, 35, any percent minority composition within their district to preserve themselves?

A. They were looking for what they considered voters that would be friendly, and they were identifying voters on computer and determining whether they considered them to be friendly or not. I must tell you, however, that traditionally

minorities vote democrat, and they were democrats and they were looking for democrats to the extent possible, regardless of their color.

Q. So if they had to go all the way to Smith County to find black democrats it means they ran out of democrats closer?

A. I think what it does mean is that when you get enough of the split in population, just as 30 went looking for friendly territory regardless of color, they went looking for friendly territory as well regardless of color. It so happens that often when you find minority voters they're friendly because they vote for democrats.

Excerpts from Deposition of Roman Martinez from *Vera v. Richards*, heard in the United States District Court for the Southern District of Texas

Dated June 16, 1994

* * * *

[7]

Will you please state your full name for the record?

A My name is Romano Octabiano Martinez.

Q What is your address?

A 1009 Graceland, Houston.

* * * *

[8]

Q In the process of drawing the districts after the 1990 Census, what was your role?

[9]

A Excuse me?

Q What was your role in drawing the lines for the Congressional Districts of Texas after the 1990 Census?

A Primarily, I was a member of the Texas House of Representatives, representing District 148 here from Harris County. And then also, I was appointed by the Speaker to be a member of the House Redistricting Committee, which drew -- drew all the House and congressional lines.

Q And as a member of the Redistricting Committee,

and as a member of the Texas House of Representatives,
did you vote in favor of the Congressional Districting
Plan which the Plaintiffs are challenging in this lawsuit?
A Yes, I did.

* * * *

[20]
Q (BY MR. MARKHAM) What input did you have in
determining the precise boundary lines of the 29th
Congressional District?
A I had a lot of input from the very beginning,
as I stated, in saying that there was a need for a new

[21]
congressional district here in Harris County. And
then throughout the entire process through the months
of between January and the summer when the district
was finally drawn, was part of -- pretty much all the
negotiations that occurred on grading the new district.
Q What role did you have in the decision to
ignore the prior voting tabulation districts and to
segment those districts into smaller different
districts for purpose of the redistricting?
A It was my desire at the beginning, as you can
see with my first preliminary plans, that I had on
this district not to do that. But as the
redistricting process unfolded, there were lots of

influences that occurred which made that happen, made it necessary to cut down to the block level.

Q And what were those influences that resulted in the decision to cut the block level in preparing the redistricting plan for the congressional seats?

A The first -- the first one was the pressure to retain the 25th Congressional District as a democratic district, in which could be kept by Mike Andrews. That was pretty much the biggest factor at the very beginning, and which made us have to cut a lot of Pasadena in my original configuration. I had pretty

[22]

much a lot of the Pasadena precinct intact, as well as Baytown ones. Those were a big portion of Congressman Andrews' base, and so throughout the discussions and negotiations we had to start paring that down. Then as time went on, it became apparent that Gene Green, who was at that time a State Senator, was interested in running for Congress. And so he started needing to make lots of cuts because of his desire to bring his home area into the district.

Q And in making those block level cuts, what was the mechanics of how that work was performed?

A How did -- I don't understand.

Q How do you look at census block and tell whether or not it meets the requirements that you wish it to meet, in order to include it in the congressional district?

A Well, it was different. Down here in the -- in the southern part, southeast part, pretty much it was Andrews' desire to keep parts of his base and what were areas that were important, I guess, to his reelection, possibly, in making sure that 25th -- it was -- it was at best a marginal district when we first started this thing, this process, and he just wanted to make it stronger and stronger into a

[23]

democratic district. And so, that was the job in there, in the southeast part of the district.

Q And in the northwest portion of the district through Spring Branch?

A What happened was, it got worse and worse. And what you can see with the progression of the maps -- and you can tell they're very clear -- when you look at -- at all the maps that are in my file, these are not just maps that I came up with; they're the maps that others would bring and would send into my file so that I could look at.

And what would happen is -- what happened once we got it up to a certain percent, and then when Green wanted to bring in his home area, that dropped

the Hispanic percentage of the district. At that point, he had to -- he wanted to make sure that we kept that percentage at the original -- at the original desired number, so he started making lots more different cuts. And so at one point, he was looking at political considerations, what neighborhoods he wanted to keep, what neighborhoods he didn't want to keep.

Q You said that the district as the process went on got worse and worse. What do you mean by that?

A In terms of splitting of neighborhoods.

* * * *

[26]

Q In breaking into the block level, in order to add various census blocks to the congressional district you were building, what are you looking for in those census blocks to determine whether or not they should be added or not added to that district?

A I didn't want to cut to the block level. If you look at all plans even from the very beginning, the ones that I presented to the legislature and to the committee, I had no intention of cutting blocks. It was the forces that occurred after I presented the plan. And after I was successful in -- in convincing the legislature that one of the new districts needed to come into Harris County, because

of the significant growth in population, it was after
that that the block started getting cut, but it was
other political forces that -- that made that happen.

Q So, it would be possible as you understand it, to draw a congressional district which would maximize
the opportunity of Mexican American or Hispanics in
the Houston area to elect a congressman without making

[27]
those census track blocks?

* * * *

Q (BY MR. MARKHAM) Do you believe it would have
been possible to achieve your goal to create a Hispanic district in the Houston, Harris County area
without making census block cuts in the old voter tabulation districts?

A If you look at my original lines that was what I did, yes.

Q And, for example, the district which you proposed in Martinez Exhibit 6 would have achieved
that result?

A Would it achieve what result?

Q Would achieve the results you felt were appropriate politically or any other way?

A Yes.

Q In going to the census block level, are census blocks being separated in some way according to racial

or ethnic composition from the other census blocks surrounding them?

A At the point that -- at the point that we got -- when Gene Green wanted to have his precincts in the district and was very adamant about it, and at the

[28]

very end of the redistricting process, pretty much the plan was at stalemate because of the Harris County plan.

At that point, we reached a certain percentage of Hispanic population, which I felt we needed to stay at. And because Gene wanted to keep his home precinct, which was high in percentage of Anglo population, that -- that reduced the overall Hispanic population. So therefore, he had to go into parts of the district and make significant block level cuts in order to maintain the percentage that we had all agreed upon.

Q And my question is, how does he separate -- or if you know -- one census block from another in deciding whether it stays in the 29th District or leaves the 29th District?

A If you look at -- I think a lot of it was -- based on political, whether some neighborhoods he

liked politically or one I liked politically.

* * * *

[29]

Q So, by dividing precincts in going to the census block level, the person who drew that portion of the district and made those block cut changes was using the ethnic characteristics of the census block; is that correct?

* * * *

THE WITNESS: At the census block level?

Q (BY MR. MARKHAM) Yes.

[30]

A Again, as I -- as I expressed to you the process at the very end of the procedure where Gene Green had put his precinct in and had dropped Hispanic population, then he attempted to bring in Hispanic population at the block level from all other different -- other areas of the district. And I guess he did -- he did take that into consideration, and needed to, in order to up the Hispanic percentage.

* * * *

[33]

Q And what were those communities that expressed to you a desire not to be be split apart?

A At one point there was a big discussion as to whether to cut up Baytown. And I had devised a plan that did not cut up Baytown. And Baytown was a

political base both for Andrews and also for Brooks.
They wanted to keep part of it. And then also Gene
Green represented Baytown for many, many years in the
State Senate, so wanted to keep Baytown in the
congressional district. So, there was a big fight,

[34]
and Baytown was kept in the district.
Q All of Baytown was kept in the district?
A No. It was cut.
Q Were there any other communities which expressed to you a desire not to be cut apart?
A I didn't want to cut up Pasadena. If you look at my plans, my original plans -- Pasadena, all the precincts were pretty much intact. But again, the forces that wanted to insure that Mike Andrews was
protected -- we had to cut into the Pasadena area because of that.
Q What about in the Houston Heights area? Was there any community leaders there who protested against being split into more than one congressional
district?
A In the Heights? The Heights never was, I believe, cut up in the plans, as I recall. I don't recall.

* * * *

[35]
THE WITNESS: No. Are you saying that -- was it more cut up? Again, my plan wouldn't have done
that.

Q (BY MR. MARKHAM) Let me use your words, then.
If the 18th Congressional District in force today were
cut up, then the 18th Congressional District which was
in existence for the previous ten years --
MR. GARZA: Now, you're talking about the
18th?
MR. MARKHAM: That's correct.
MS. HAIR: And if he knows what the prior
18th looked like.
THE WITNESS: Yes. I was very familiar
with what the prior 18th looked like, and there were
significant cuts in the present 18th. But again, that
was due to the political forces that occurred during
the redistricting process.

* * * *

[38]

Q Is it fair to say that the cut lines, the
boundary lines of the new 29th Congressional District,
precisely followed the ethnic composition of Hispanics
in those portions of the county?

[39]

* * * *

A Are you saying that we try to pick Hispanics?
Is that what you're trying to say?
MR. HICKS: Can you tell us the precinct
numbers you're asking about?
MR. MARKHAM: 1091, 178, 191. Is that a
little south -- yes, you've got the correct one.

THE WITNESS: If you look here, this precinct here is only 25 to 40 percent Hispanic. 20 to 40, so I'm not really sure that -- doesn't seem to me like we're going after -- based on racial percentages, or what are you're talking about?

Q (BY MR. MARKHAM) Let me ask you then, Mr. Martinez, why then, if you weren't going after racial -- if you weren't seeking to include 1091 for racial purposes, why didn't you just include one of those other precincts such as 404 or 302, something that's closer in to the body of the congressional district?

A There's many reasons. We may have needed a certain number of voters in order to meet the deviation, and that precinct there had it. There's many reasons why that precinct should have been put in

[40]

that district. I'm not sure what it is, just been looking at it.

* * * *

[42]

Q The question is, is it your testimony that in order for Mr. Green's precinct to be attached to the 29th Congressional District, it's not possible to make a narrow slice through Precinct 408; that instead, it's necessary to go through and include this group of 20 or 30 precincts to the east?

A The other reason is that there's highly

polarized voting in this precinct, which I was aware of, and I did not want those precincts in this district because of the highly polarized voting that occurs in those precincts.

* * * *

Q Okay. Are there any Hispanic communities at the -- for the 1992 voting tabulations districts which are excluded from the new 29th Congressional District in the East End?

A Again, you may have pockets all through here that -- that are Hispanic neighborhoods, but since they're at the block level, they wouldn't show up on this map, because they weren't taken into a district. Do you understand what I'm saying?

Q So, you're saying that the district could have made even more Hispanics if there had been even more block level cuts?

MS. CASTRO: I object to the form of the question. That is not his testimony. That's not what he's saying.

Q (BY MR. MARKHAM) Is that the essence?

A There's other neighborhoods that could have been cut in the districts yeah.

Q So, if more cuts could have been made, the district would have been able to create an even more

higher Hispanic voting age population?
A You've got a tremendous Hispanic population

[51]
here in the Gulfton area that was not brought into the district.
Q And, in fact, that Gulfton area was added by a corridor, which we see here at Precinct 570 and 360 to the 18th Congressional District; is that correct?
A Yeah. Part of it was, yes.
Q So, the largest part of the Gulfton Hispanic communities was by a narrow corridor added to the 18th Congressional District; is that correct?
A I believe it was added by -- I think those were precincts that have been there, I think. As I recall, I'm not real sure.
MR. HICKS: Can you repeat that? I didn't hear because of the traffic.
THE WITNESS: It was created by district precincts that were there, if I recall. I'm not real sure.
Q (BY MR. MARKHAM) In determining to draw the new 29th Congressional District, what was the purpose that you were looking at the policy consideration in how you drew that district?
A The purpose was in bringing in a new -- an additional congressional district into Harris County.
I guess the policy guidelines, I was looking at those -- that existed that -- that was in my package. I

[52]

pretty much utilized those to convice the legislature that it was -- it was necessary to -- to draw a district -- a new district here. And early on in the process, I was able toshow that that one could be drawn.

Q And when you say a district can be drawn, you're not referring to a district just for anybody; you're referring to a district that's designed to elect a particular person or a particular -- person of particular ethnicity? What exactly are you trying to achieve?

MS. CASTRO: Objection, compound.

MR. GARZA: Which part of the question do you want him to answer?

Q (BY MR. MARKHAM) Was the purpose of the new 29th Congressional District to elect a Hispanic?

A The purpose that I saw in my mind, one, was to -- as I understood it in going to all the redistricting conferences -- was that if the population were there and it was cohesive, that we warrant the creation of a district. And then personally, I was interested in running for that district.

* * * *

[54]

Q (BY MR. MARKHAM) Okay. The press release refers to a plan which is the same, I believe, as your

Exhibit No. 6 which you earlier provided us; is that correct?

A Exhibit No. 6, yes.

Q With respect to that district, was it your purpose in designing that district to permit the Hispanic communities to elect the first Hispanic congressman from Harris County?

A The to permit them to have a good opportunity to elect a Hispanic, yes.

* * * *

[61]

Q Did the Voting Rights Act require that a voting district be created even if it results in block-by-block cuts in the precinct lines or in irregular shape of the district?

A First off, it was again -- I would reiterate that it was not my desire to cut at the block level to create a district -- and did create a district that did not do that. But I personally interpreted and utilized the Voting Rights Act to convince my fellow colleagues in the legislature that -- that the Hispanic communities here in Harris County was warranted a district; that they could maximize their opportunities to -- to influence the election of a congressperson.

* * * *

[65]

Q (BY MR. MARKHAM) When you define Hispanic, I guess, how do you do it? How do you define the term Hispanic?

A Someone with Hispanic descent. Someone of Hispanic descent.
Q So, an attorney her in town, George Dias Arestilla, son of a Cuban immigrant, he in your view would be a Hispanic?
A Yes.
Q What about Mary Beth Alameda, my sister who

[66]
assumed a Hispanic surname by marriage? And I'll represent to you that our -- my ancestry is the same gene pool -- is greater than 90 percent British Isles.
A She was -- she's married to --
Q A person with a Hispanic surname which she adopted by marriage.
A Uh-huh. I'm -- I'm -- I don't know all the technicalities, but she probably would not be, but her kids would.
Q I've served on a non-profit board with Tony Buenaflor who hails from the Phillipines. Would he be Hispanic, entitled to representation in the 29th Congressional District?
A Everyone who lives in the district is entitled to the representation that congressperson is going to provide whether they're Hispanic or not.
Q Would he be entitled to have the district drawn in a way to include him?
MS. CASTRO: Objection.
THE WITNESS: Would you repeat that again?

MS. CASTRO: Vague, ambiguous.

Q (BY MR. MARKHAM) Let me see if someone from the Philippines would be considered Hispanic.

[67]

A I'm not really sure if the Philippines would be.

Q I have a neighbor Javier Wiseland. He was born in Argentina. Would he be a Hispanic?

A I assume so.

Q The wife of Dr. Eugene Fontenot who is the republican candidate for Congress, the 25th District originally from Honduras, would she be Hispanic?

A I didn't --

Q Does Mr. E.A. Morris who perenninally --

A W.R.

Q W.R., who often enters election contests here in Harris County, he's a Hispanic?

A William Rosendas Morris, yes.

Q And President Fujimori of Peru; President Menin of Argentina; General Penashea of Chile; all of those are Hispanic?

MS. CASTRO: Objection, compound.

Q (BY MR. MARKHAM) Are any of these Hispanic?

MS. CASTRO: Irrelevant.

MR. GARZA: You know who those people are?

THE WITNESS: I know who they are, but they wouldn't be residents of this district.

Q (BY MR. MARKHAM) If there were to move to

* * * *

[73]

Q Do you believe there's any sense of community in this 29th Congressional District among the people who live in the Spring Branch area portion of the district, and people who live on the north end of the district, and the people who live on the East End and the people who live in the Baytown; do you think they share a sense of community?

A I think there is definitely a community of interest within the 29th District. Prior to me looking at the possibility of running for this district, we did take a poll and found that when you look at socio-economic status, educational, work, that the district is pretty homogenous. Just, you've got a district that is -- could be described as very blue-collar from poor to middle income, and so when you go from neighborhood to neighborhood, I think you have some very, very solid community of-interests within the 29th Congressional District.

* * * *

[75]

Q Do you consider that in any way an inefficient way to campaign in campaigning to social clubs or civic clubs whose entire territory is included within

your district?
A We did not have data through the redistricting process of civic club lines at the time, and we did give lots of access through hearings, public hearings, both in Austin and here locally, for groups to be able to come testify to us about wanting to stay together in neighborhoods. And if that was done, I'm sure that we took that into consideration. And again, I want to reiterate that if civic clubs were split and neighborhoods split, it was my intent from the very beginning, my desire, not to do that.
Q And one of the reasons you viewed that as being inappropriate is that it might result in confusion of voters?
A I just didn't see -- didn't think that it had to be done. And the only reason it was done was because of the political forces that I described earlier.

* * * *

Dated June 21, 1994
Volume III

* * * *

[16]

Q Now, you also testified that among your initial

[17]

goals was looking at a district that might be favorable to your candidacy; do you recall that?

A Yes.

Q That you were, in fact, contemplating running for the Congress out of that new district; is that correct?

A That's correct.

Q Okay. When you looked at those maps, did you also then consider areas of Houston that would be favorable to a Martinez electoral bid?

A That's correct. I sort of compared as to whether it would be good for a Hispanic candidate overall or to myself.

Q Okay. And are there areas of Hispanic concentration that would be more favorable to you than other areas of Hispanic concentration in the Houston area?

A Absolutely.

Q And so then you would want areas of those

areas for
the ones that you have a relationship with or that
you would feel comfortable with if you were making
a race?
A That's correct. I believe Gene Green reported
making those same kind of determinations.
Q So you were both making those kind of

[18]

determinations?
A That's correct.

* * * *

Q And was there much discussion and was there much
evidence presented to the committees and was there
much discussion among members of the committee
about the existence of polarized voting in Harris
County and in Texas?
A Well, absolutely; Even before all the public
hearings occurred, we internally had hearings with
our staff, the Redistricting Committee staff, and
attorneys to go over the issues of racial
polarization. We became very familiar with what
had occurred in prior redistricting terms,
redistricting sessions, and the problems that the
State had had because we had not taken care of that

issue. And so we became very familiar with that and learned about the problem of racial polarization in the State. I was very familiar with it locally here in the Houston area. And so in my creating and coming up with this district, I took that into consideration and at all times communicated that with the members of the

[19]

committee, and I think that was one of the most compelling factors in my being able to convince my fellow committee members and the legislature that one of the new districts had to be here in Houston and that it had to be drawn a certain area in order to comport with racial polarization.

Q Okay. Now, looking at District 29 as it's exhibited on Deposition Exhibit 22, we've talked a lot about the racial makeup of the district and about different blocks being brought in that had minority populations. Are there other things that link this district, other common threads that this district has?

A I think that even before I started working on creating the district, I felt very comfortable that we were going to be able to create a district that brought in very similar areas. And now with the district having been in place now close to two terms, I feel very confident that this is a

district that in terms of all the areas is very similar. When you look at it economically, socioeconomically, it is from low to middle income.
I did a poll prior to my making a determination of whether I was going to run for this district for Congress, and it came out that

[20]
the median income of this district is about 25,000 across the board. Socioeducational-wise across the board it's pretty even, very low educational attainment levels. In terms of employment, the whole eastern part of the district is pretty much tied into the petrochemical district. It includes pretty much the whole Port of Houston from downtown all the way to Baytown. Many the people who reside in this district either work on industry related to the Port or to the petrochem industry, but pretty much the whole district is much -- very much of a blue-collar, working class population. So I feel it's a very homogeneous district, one that has a lot of community of interests that are very, very similar.

Excerpt from Deposition of Carl Vernon Reynolds from *Vera v. Richards*, heard in the United States District Court for the Southern District of Texas

Dated June 17, 1994

[21]

Q. (By Mr. Hurd) Who did you deal with -- did you deal with Bob Mansker more actively toward the end?

A. --Not really. I mean --

Q. Who did you deal more actively with toward the end?

A. Well, it depended on what part of the state we were working on, who was -- whose districts were affected.

Q. All right. How would you identify the different regions of the state so that we can talk about people that were more active in the different regions of the state?

* * * *

[22]

A. Dallas/Fort Worth and the surrounding --

Q. Okay. Who would you have been more actively involved with in that process?

A. That would have been Senator Johnson and her staff, Congressman Frost's staff, Bryant and his staff, at some point Geren and his staff, and Congressman Barton and his staff, and as it played out Senator -- it used to be Senator Sarpalius --

Congressman Sarpalius.
Q. Okay. What was their -- who did you meet with -- deal with from Congressman Frost's staff?
A. Mansker and Angle.
Q. What did they communicate to you was their desire on congressional -- on the congressional districting structure?
A. They wanted to accommodate Senator Johnson's effort to draw a district in Central Dallas and still get Martin Frost re-elected.
Q. Did they ever communicate to you how they wished to accomplish that geographically with maps and neighborhoods and that sort of thing?
A. Numerous times, numerous alternatives.
Q. Was there any -- how did the Metroplex area's map evolve mechanically on the computer as far as desires by people? Someone has got to put it on

[23]
the machine, bring it back, and people criticize. Is that generally how the process works with a -- with a mapping issue, is that ultimately it's got to go on the computer --
MR. HICKS: Wait.
Q. -- someone has to criticize it, and then you would start with another map?

* * * *

[43]

Q. You had spoken earlier that I think Lieutenant Governor Bullock had indicated that the Senate was going to support Senator Johnson's district in Dallas. Why wouldn't her first -- why did her first proposal not simply sustain itself in the process --

MR. HICKS: If you know.

Q. -- if you know?

A. I think it generated too much concern on the part of Frost and Bryant that it jeopardized them and that they prevailed upon the members of the legislature to let them work -- work it out in more detail with her.

Q. In that process of working out with Congressman Bryant and Frost in the -- particularly in the Dallas area, would that be -- that process of working it out between the three, is that what caused the districting plan in the Dallas area to become more finely tuned, less wholly, or geometrically simple?

A. Yes.

* * * *

[44]

Q. On the areas in relation to Martin Frost's and the Eddie Bernice district, where are some of the areas that you can recall that there were some

splitting of precincts and give and take on the districting process?
A. I don't recall by name of neighborhood. I could only point to it on a map and wouldn't be able to -- that wouldn't help me give you a name.
Q. Okay. In dealing with Congressman Bryant, who was his staff that you were dealing with, if you recall?
A. Carlton Carl.

[45]
Q. Was there anyone else from his staff other than Carlton or was Carlton the only one you recall?
A. I think there was someone else, but I don't remember who it was.
Q. Okay. And for Congressman Edwards or is he not in the Metroplex?

* * * *

[61]
Q. Did you have any discussions with the staff of Congressman Brooks, Andrews, or DeLay on the finalizing the plan in Harris County?
A. I believe there was some interaction with Congressman Andrews' staff. I don't recall Brooks and DeLay being involved.
Q. And, if you know, in general terms, what were the content of those contacts and how did they impact the districting plan?
A. Well, it would have been democratic

percentage in Andrews' district and, to some extent,
specific places. One that I recall, I think, was
the -- the hospital area of Houston and I think that

[62]
Andrews wanted that in his district, as I recall.
That sort of thing, neighborhoods in and out, that
kind of thing.

* * * *

[65]
Q. And what were their interests in the
construction in Harris County?

[66]
A. They were -- she was interested in
accommodating the -- the new district that would be
added, District 29, and maintaining some viable
democratic component of his district, 25, so that he
would be re-elected, and in addition to that, some
particulars of neighborhoods and locations. And I
have given you the only example of that that I can
remember now.

* * * *

[110]
Q. And was that increase in population and
increase in minority population a factor in the

decision to draw districts as far as where the -- the three new districts that Texas was entitled to under apportionment, did that play a role in the decision of where to place those districts?

A. It played a role particularly with respect to 28 and 29, which are in South Texas and Harris County respectively.

Q. Can you describe a little bit more about the process by which the legislature made that decision?

A. I don't know when or exactly how the decision was made. I think it was suggested by various parties in the -- in the presession hearings, the outreach hearings, that all three new districts ought to be and could be created to elect minority

[111]

candidates and that -- that notion obviously took hold. I'm not sure how -- if it was ever formally decided that that was the way that Texas was going to go, but that was an underlying assumption in -- in all our work.

* * * *

[126]

Q. Do you ever recall any characterization by

those involved in the districting process that would have characterized this as a partisan incumbent protection plan?

A. My understanding from the start was that -- that it was going to be -- that it was going to protect the entire delegation regardless of party.

* * * *

Excerpt of Deposition of Christopher Sharman from *Vera v. Richards*, heard in the United States District Court for the Southern District of Texas

Dated June 18, 1994

* * * *

[163]

Q. (By Mr. Hurd) In the areas that are between the 18th and 29th in this inset, at the very more or less top and center of the inset, is this an area that included some VTD splitting activity?

A. A lot of VTD splitting activity, I would say.

Q. In this area, was the VTD splitting done so that you could allocate in the VTD area -- within a given VTD the population by race to either the 29th or the 18th?

A. Well, in -- in regards to the 18th District. that was just used as a corridor to connect the 18th up to other populations in the northern part of the county, but the 29th, the Spring Branch, Spring Valley -- it's labeled "Spring Valley" here; I considered it Spring Branch -- the Spring Branch area was included in there at the request of Roman Martinez.

Q. That's not what I'm asking. I'm asking you, when you split the VTD, you got -- let's assume we split it in only two pieces.

[164]

A. Okay.
Q. Did you take the Hispanic part and put it in the 29th --
A. Yes.
Q. -- and take what's left and put it in some other district?
A. Well, yeah.
Q. Okay.
A. Yeah. I mean, we were creating a Hispanic district, so, yes, we put Hispanics in -- in the 29th.
Q. That's all I'm asking. We were in there -- you were in there actively in this area splitting precincts and assigning the subunits by racial composition?
A. Among other things, yes. That's correct.
Q. Is that -- and I don't mean to ask is that the only driving single force that ever created the --
A. Right.
Q. -- the phenomenon of VTD splitting.
A. Right, because it's obviously not.
Q. What else are some other phenomena?
A. Where people's district offices were, where their relatives lived, economic communities of interest, whether or not there were voting populations

[165]

versus non-voting. I mean, for instance, this arm that comes off Craig Washington's district, they expressed no desire -- even though it's majority Hispanic, no desire for that to be in the Hispanic district because it's known as the Gulfton area and supposedly was an area where there was a lot of

non-participating Hispanics.
A lot of this area in Southwest Harris County is mainly Hispanic. It's actually a mix, but it's Asian, Hispanic, and black, but it's mostly apartment community, non-stable populations that -- that the Hispanic community in Harris county had no particular desire for them to be included in a Hispanic district because they didn't feel like that helped draw a district in which they had an opportunity to elect a candidate of their choice.

* * * *

Vera v. Richards Trial Testimony
heard in the United States District Court for the
Southern District of Texas
Excerpts from Testimony of Edward Blum,
Ronald Weber and Christopher Sharman

Dated June 27, 1994 - July 1, 1994

Testimony of Edward Blum

* * * *

[18]

DIRECT EXAMINATION

BY MR. HURD:

Q Would you state your name and address for the record, please .

A My names is Edward Blum. I live at 1912 Bissonnet here in Houston.

Q Where do you work?

A I work at 2,000 Post Oak Boulevard, also in Houston.

Q Do you know what congressional district your home is in?

A It's the 18th congressional district.

THE COURT: Counsel, could you pull that a little closer .

[19]

BY MR. HURD:

Q How long have you been a resident of Houston?

A Since 1962.
Q Prior to living where you live today, where was your prior residence?
A On Hermann Drive. 1111 Hermann Drive.
Q How far away did you move in Houston? What part of Houston is that in?
A That's in the Museum area. I still live in the Museum area. Approximately three-quarters of a mile away.
Q Do you know what district your previous residence was in?
A I do. 25th congressional district.
Q Do you know the district that your location of where you work is in?
A That's the 17th congressional district.
Q How far is your residence from where you work?
A About six miles.
Q Have you been involved in having personal experience on the construction and the location of the 18th congressional district?
A Yes. I have.
Q How did you gain that experience?
A I was a candidate for congress in 1992, running to represent the people of the 18th congressional district. So during the course of the campaign, I learned about the

[20]

district intimately.

Q Was the 18th congressional district as constructed today the district that you ran in?

A Yes.

Q Did you experience any difficulty as a candidate in campaigning in the 18th congressional district that you feel relates to its physical structure?

A There were innumerable problems campaigning. First of all, trying to locate what streets were in the 18th congressional district, following roads that would go, houses that would go down one side of the street but not the other, being very confused in trying to meet the people who lived in the 18th congressional district, and also running across many residents that were confused about what congressional district they were put in.

Q Did you do any door-to-door campaigning?

A We spent, my wife and I spent nearly a year going door-to-door canvassing voters. We met nearly 25,000, knocked on nearly 25,000 doors during that year.

Q In your efforts to campaign, did you ever experience or notice material that related to other congressional districts

that might have been in the 18th congressional district?
A Often I would knock on a door to introduce myself and was
told by the resident that they were not in the 18th
congressional district. The 18th district actually was across

[21]
the street. That happened frequently. Often I would meet
people who were quite shocked that they had been redistricted
out of their previous congressional district, so it was mass
confusion daily, either from going door-to-door or from
receiving phone calls from people who had been informed they
were put in the 18th congressional district or weren't sure
whether they were still in the 18th.
Q Did you ever attempt to create a map yourself manually to
determine where the 18th congressional district was?
A We did. We used the 1992 Harris County precinct maps,
and we used state-generated walk lists that faciliated going
door-to-door.
Q Were you in Court when we had had a previous hearing in
this matter where the map you tried to create was displayed?
A I wasn't here that day.

Q Can you describe generally your map that you created.
A The map is a large, almost six-foot by four-foot precinct map, multicolored with different pastel colors that shows the sprawl of all the different congressional districts here in Harris county.
Q Were you able or successful in creating a map that would accurately depict your own congressional district?
A I think so. It was very laborious to go virtually house-by-house, it seemed, block-by-block to create this map, but I would think it was very accurate.

[22]
Q Did you, in the election process, experience a difficultly of the election officials themselves allocating precints to the wrong districts?
A Actually, after the primary, as I recall --
Q What year is this?
A This was in 1992.
Q Thank you.
A After the primary in 1992, three or perhaps four precincts that voted in the 18th congressional district primary election were subsequently dropped and put into another congressional district because of a problem that the county or the state had made in identifying those three

precincts belong to the correct congressional district.

* * * *

Testimony of Ronald Weber

* * * *

[134]

DIRECT EXAMINATION

BY MR. HURD:

Q Would your state your name and address for the record, please.

A Ronald E. Weber, W-e-b-e-r. 3487 North Summit Avenue, Milwaukee, Wisconsin 53211.

Q Where are you presently employed? In what capacity?

A I am the Professor of Government at the University of Wisconsin, Milwaukee, and also chairman of the political science department.

* * * *

[191]

Q Have you gone further in trying the determine what was the other factors involved in the districting process in the State of Texas?

A Yes.

Q What other areas, what other material, other data have you searched out and reviewed in trying to accomplish that?

A Well, first of all, there is a public record of what the state did that's reported in the Section 5 submission, and those accounts.

Q Have you had an opportunity to go through that material at all?

A Yes. I did. One of the first things that I did was go to Austin, go to the Secretary of State's office and go through and identify in the Section 5 submission, the material that I thought would be relevant and important to begin the process of addressing these questions. Generally the states -- I am very familiar with the Section 5 pre-clearance process. The Department of Justice

[192]

has very high standards for what they demand from the jurisdictions. You find a voluminous record that's public that you can, in effect, go into and find information that will be helpful for you to help to evaluate the plan.

Q In evaluating that information or reviewing it, have you had any notations in your own mind as to the type of information that seemed more critical to you in making your

analysis of this plan?
A Well, when I made my first pass through the Section 5
transmittal material, I didn't have the kind of familiarity
that I do have today with the plan; but at that time I was
looking for demographic information about the districts, how
do they differ from each other in terms of population make-up,
and I was also looking for maps.
I was looking for, perhaps, the possibility I would
stumble upon maps that showed the racial breakdown of the
districts; and lo and behold, I was not at all surprised to
find in the Section 5 submission, because that's something the
Department of Justice expects, that there were very good maps
showing the racial breakdowns, the kind of maps we have we
have been looking at here today, that characterize the
district lines, that characterize the ethnic and racial
make-up of the populations at the VDT and the block level as
they relate to the respective districts, so all of that's in
the submittal.

[193]
Q In reviewing that information, were you able to garner an

opinion or an impression of the people that were involved in the factors that were leading to the ultimate conclusion of the districting plan that the State of Texas had?

A Yes. The record that was submitted to the Justice Department, whether or not that the state will now admit that's the truthful record or is some other record, is a record that documents a pattern of using race to draw congressional districts.

* * * *

[2-47]

Q If you would proceed with summarizing your analysis in Harris County and what you believe is significant in construction.

A Okay. There are some things to say about the significance of this memo, which is to say that they were pointing to one particular precinct as a problem, but it was just an example to demonstrate to the justice department the additional problems that they were going to have in drawing the commissioners were going to have in drawing the precincts. And so subsequent to reading this, I then sort of

asked for an identification of some of the split VTDs or precincts in the Houston area, Harris County area; and I was provided with a list of some of those precincts, and I then asked a member of my staff to tell me something about the political voting of the precincts in 1988 and 1990, because I was aware that there was this issue of were they following, in doing the lines were they paying attention to party or were they paying attention to race.

[2-48]

And as I hired yesterday, I think Representative Grusendorf testified you can work at the precinct level and pay attention to politics, the parties; but when you split the precincts then you don't have accurate information as to how people vote, you only have accurate information as to race or ethnicity, and so I then got some information provided to me about the voting patterns of some of the split precincts.

The split precincts in Harris County, the 10 or so that I had selected, they're varied. Some are mixed in their voting pattern. Some are overwhelming in one direction, and a

couple that are overwhelmingly Democratic, they were split. I don't know why they were split, other than I guess I could conclude it was race, they're being split. For example, 607 is being split. For congressional districting is being split into three districts. Nine precincts come about because it State House District 12.

Q Was it allocated to three different congressional districts?

A Yes. But the puzzling thing to me is that the precinct was so overwhelmingly Democratic, it didn't even matter which district you put it in this terms of voting behavior at the general election, so it could have gone to District 25, for example, wholly rather than being divided between 18, 25 and 29, and that is just one precinct, but it's pretty powerful evidence to me that at the point of doing the precinct splits,

[2-49]

politics may not have been as important as maybe others are going to say it is important. In effect, it was simply dividing on the basis of race.

Testimony of Christopher Sharman

* * * *

[3-155]

CHRISTOPHER SHARMAN
was called as a witness by the State and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HICKS:

Q Mr. Sharman, I guess begin by just stating your name and where you live.

A My name is Christopher Sharman. I live at 1805 Collier --

JUDGE HITTNER: Sir, you need to angle that mike up a little bit and pull it in, and you need to speak up, sir, and would you spell your name.

A Christopher Sharman, S-h-a-r-m-a-n. I live at 1805 Collier in Austin, Texas 78704.

Q How long have you lived in Texas?

A All my life.

Q How old are you?

A 27.

THE COURT: Sir, with due respect, you are going to have to speak up.

THE WITNESS: Sorry.

BY MR. HICKS:

Q I just want to start, really on the part that's relevant

to this case.
Can you tell me your first involvement with aspects

[3-156]
of redistricting in Texas?
A That would have been with the Texas Legislative Counsel
in 1990.
Q How were you involved?
A I was working for the Legislative Counsel, and I went to
all the interim hearings before the session.
JUDGE HITTNER: Just a little bit of background.
What do you do for a living, sir, and what is
your education?
THE WITNESS: I have a B.A. In government from
University of Texas. I am currently attending the L.B.J
School of Public Affairs there. Right now I work for a
political consultant in Austin, Texas just for the summer.
JUDGE HITTNER: Thank you, sir.
BY MR. HICKS:
Q You were, back in '90, working for legislative counsel
and you were attending interim hearings?
A That's correct. My job was basically to make sure that
hearings were recorded, take notes, and then I would prepare
detailed summaries after the hearings were over.
Q Was this interim hearings on all aspects, house

representatives, state senate and congressional redistricting?
A That is correct.
Q About how many did you attend?
A All of them.

[3-157]
Q About how many was that?
A I think there was 15 or so.
Q What did you do in your summaries?
A I would listen to the tape recorded testimony, and they were very close to being transcripts. They were very detailed summaries. I would incorporate all the written testimony that was submitted and maps and whatnot and build those into summaries.
Q Were these well-attended hearing?
A Some were more well attended than others. I wouldn't call any of them well attended. Based on the amount of publicity, the lengths that Legislative Counsel went to publicize them, I think the largest was probably here in Houston and there was perhaps 300 people there.
Q Generally, what was your sese of the crowds that came or the groups that came?
A Generally they tended to be people that were involved in politics, active or involved in activities that related to

19 politics in some way, chamber of commerce or local elected
20 officals, or there would be some constituents that were just
21 very active in politics.
22 Q After you had attended those hearings, what did you do?
23 After you had finished attending that round of interim
24 hearings, what job did you have or did you continue in that
25 same job?

[3-158]
1 A No. I was hired by the Senate Redistricting Committee to
2 be their technician for drawing maps.

* * * *

[3-199]

19 Q In District 30, did you have any special reason to try to
20 maintain any kind of balance in terms of the number of Black
21 residents in that district?
22 A Well, yeah. We thought we had an obligation under the
23 Voting Rights Act to allow the Black community to elect a
24 representative of choice in that district. So, yes, yes.
25 Q I guess what I'm asking is, you have made it sound

[3-200]

like -- and if it's so, tell me -- but you have made it sound like every time in this area that we see blue, you've included it because it's a minority. Is that so?

A No. Not necessarily. I mean, that's more true than not for voting rights districts than it is for other districts.

Q Okay. So, did you do them differently in voting rights districts than you did in non-voting rights districts?

A Yes.

Q Why would you want to keep a Black population, for instance, in a voting rights district created to allow Black voters an opportunity to elect candidates of their choice? Why would you?

A I would think that's obvious.

MR. HIRTZ: Yes. It's obvious. It's a leading question.

THE WITNESS: I don't think the question was leading, but, I mean

JUDGE HITTNER: You said the LBJ School.

MR. HICKS: He has got an objection, so don't answer.

JUDGE JONES: Go ahead and answer it.

BY MR. HICKS:

Q Why, in a minority district -- I know the answer seems kind of obvious, but there seems to be some kind of confusion

25 about this.

[3-201]

1 Why in the minority district would you have made some
2 effort to include Black voters when you began looking at
3 detailed precinct level numbers?
4 A Because generally you wanted to have a majority Black in
5 a district or what you felt was necessary for that community
6 to have an opportunity to elect a representative of choice.
7 The committee had staked out a general thumbnail
8 sketch going into the redistricting process that you generally
9 shot from for a majority of one minority community or the
10 other, around 50 percent. If it was possible that, you know,
11 was there was a concentrated community and you could put them
12 in a district fairly easily, you would do that and then shoot
13 for an overall target, or there is a sketch of around 65
14 percent was deemed sufficient to allow them to elect a
15 representative of choice.

* * * *

[3-205]

Q Well, let's go over to the other incursion which we have heard some testimony on, I believe. It's the part of District 24 toward the center of that part of the map.

A Right.

Q You heard testimony about a large part of that, anyway, being Representative Garfield Thompson's house district area?

A That's correct.

Q What's the green district there?

A That's Congressman Geren's district.

Q Is that District 12?

A Yes. It is District 12.

Q Why would Congressman Frost take that area away from -- instead of Congressman Geren?

A Well, we had two different versions of the map before this version was decided on. If you will notice, Congressman

[3-206]

Geren runs out into some rural counties, Johnson County and into Parker. One map actually went into Denton to get Democrats in the City of Denton.

Q Is Denton the county to the north --

A To the north of Tarrant, that's correct. But it was stated by his staff that he wouldn't fair as well running rural and that it would be better for Geren to

run his district out into the rural Democrats, because he felt
that keeping his district urban was better for him.
Q Who did?
A Representative Frost.
Q Why would he want to keep his district urban? He had had
an urban district before, right?
A He had an urban district before, and he felt that
possibly his choice for religion would hurt him.
MR. HIRTZ: Objection, unless this man has person
knowledge of the congressman's feelings, I object.
THE WITNESS: Well, these were the reasons his staff
was stating at the time. I presume they were speaking for
him.
MR. HIRTZ: My objection is limited to hearsay.
MR. HICKS: That's admissible hearsay.
JUDGE JONES: On what basis?
MR. HICKS: Under Rule 8033.
JUDGE JONES: Tell me what it is.

[3-207]
MR. HICKS: Because it's an out of court statement of
somebody's intent, plan or design.
JUDGE JONES: It's admitted.
MR. HICKS: Thank you.
BY MR. HICKS:

Q You were kind of circumspect. What did you mean?
A He's Jewish and did not feel like those rural counties would support him as wells other Democratic areas because of that fact.
Q So that's part of the reason he ended up in this area of Tarrant County instead of rural in areas he might have gone to?
A That's part of the reason; that's right.
JUDGE HITTNER: Let me ask a question at this point. You were mentioning that race and politics were being taken into consideration. Was religious preference taken into at any time?
THE WITNESS: In this one instance it was.
JUDGE HITTER: In this one instance?
THE WITNESS: That's correct.
JUDGE HITTNER: Thank you.

* * * *

[4-51]

Q I come back one more time on District 29 to why were you working so hard to maintain it as a Hispanic district?
A District 29? Well, we felt an obligation to create one

under the Voting Rights Act. I mean, the Hispanic community and Harris County testified the population was there, they presented us with maps that be combined the population in such a way that they felt was fairly easy to do, and it was. If you didn't have a lot of other factors, if you just drew Hispanic district in a vacuum, you could make it much more compact than what we eventually ended up with. So, we felt an obligation, and we wouldn't have gotten a map out

[4-52]

of the house or the senate, I don't believe, without drawing some kind of Hispanic district in Harris County.

* * * *

[4-77]

Q How many congressmen were involved in the working up of these congressional districts in the Dallas/Tarrant County area of Texas?

A The Dallas/Tarrant County area? Well, certainly Congressman Geren and his staff. Congressman Frost;

Congressman Bryant; Congressman Johnson; Congressman Hall to a certain extent; Congressman Stenholm to a certain extent; probably sums it up.

Q Four or five?

[4-78]

A Roughly.

Q How many staff members from each of these congressmen did you have contact with?

A How many staff total or from each?

Q From each, if you know?

A Well, let's see Congressman Frost, I believe, had at one point in time three staff members down here. Congressman Bryant, one. Congressman Geren, it was hard -- he didn't particularly have staff down here. He had people that were working on his behalf. I think Paul Lagiman was one of those. He was a local lawyer that he got deferred to in town.

Congressman Hall I don't believe had any staff down here. I think that about sums it up.

Q How many individuals in total?

A For the Dallas/Fort Worth area?

Q Yes, sir.

A Just related to congressional persons?

Q Yes, sir.

A Five or six, seven.

Q Are you telling this Court, sir, that five or six

22 individuals went out and gathered empirical information from
23 every one of the precincts that was split in the
24 Dallas/Tarrant County area so you could make a split to put
25 Democratic voters in those precincts?

[4-79]
1 A No. I am not representing that five or six people did
2 that. No, I am not representing every precinct empirical
3 evidence was gathered on. There were a lot more people
4 involved in the process that knew these areas besides the
5 congressmen. It was not something they came in and drew
6 whatever they want. There was a lot of conflicting forces
7 going on.
8 Q The people who were supplying the information knew the
9 four or five, they couldn't physically cover all of the
10 precincts that you needed empirical information, could they?
11 A What you are failing to understand is that I had already
12 been through the senate and house redistricting process where
13 I had a lot of information, contact with people from Dallas
14 and other areas, so I had all that information retained, and
15 then these people came and provided me even more information

and gathered more information as the process went on.
It was a continuous process of information that was
flowing in flowing out. I couldn't even name how many
individuals through one way or another were involved in this
process, through telephone calls. I mean, they were
constantly calling people that had local knowledge. It went
on and on. It was quite a process.
Q Isn't it a fact that race, the racial composition of
precincts was a factor in the Texas Senate redistricting plan
in 1991?

[4-80]
A For the whole plan or are you talking about for certain
districts?
Q For certain districts.
A For districts that were under the Voting Rights Act,
yes, we kept an eye to racial opponents of those districts.
Q And only those districts, sir?
A Yes.
Q Now, for each voting rights district, it had borders
with other districts, didn't it?
A Yes. It did.
Q You can't be telling me you didn't know anything about

the racial composition of those other districts just over the line, can you?

A Well, no, but that wasn't a consideration. I mean, you do something for -- I mean, when you cut a precinct for a --

Q Excuse me. Is your answer yes or is it no?

A Do I know the racial composition of most of the Texas senate districts? Is that the question?

Q Those interfacing with the minority voting rights?

A I know the racial composition of most of the Texas congressional districts --

Q I see.

A -- and senate districts.

Q And house districts?

A Some of the House districts. I was only involved in a

[4-81]

couple of counties in the house. The problem is when you draw on this computer, it tells you the population data, racial data. Every time you make a move, it tabulates right there on the screen. You can't ignore it.

Q And that racial tabulation district was before you at all times right on up through the date that the final maps were drawn; isn't that a fact?

A I was working on the same computer system, yes.
Q Will you, please, answer my question, sir. That racial data was in front of you right up 'til the time drew the final map? Yes or no?
A Yes. Population data was displayed always.
Q Thank you, sir.
Q That racial data was a lot more important to you than the empirical data?
A I would not characterize that as correct.
Q You have told us that the people told you how many Ann Richards yard signs were in these precincts. Would you mind telling this Court how many Ann Richards yard signs were around in the Dallas/Tarrant County area in the summer of 1991 for an election which had ended November the year before?
A That was probably a mischaracterization. I meant to say political signs. I picked Ann Richards out as a prominent

[4-82]
Democrat. Could have been Dukakis.
Q Isn't it a fact that -- I beg your pardon, sir?
A Could have been Dukakis.

* * * *

[4-105]
Q I also ask you to place in front of you, Mr. Sharman,

Plaintiff's Exhibit 34-H18, which is the Black and Hispanic population distribution by VTD of Comal County.

[4-106]

JUDGE HARMON: Give us one second.

JUDGE JONES: "Comal," Mr. Hirtz.

MR. HIRTZ: I stand corrected.

JUDGE HARMON: Is that the map book or in other books?

MR. HIRTZ: It is in a large map. I believe this may be your copy.

THE WITNESS: Could I get some water, please.

MR. HIRTZ: You certainly may, sir.

BY MR. HIRTZ:

Q You have both of those maps in front of you at this time, Mr. Sharman?

A Yes, sir. I do.

Q Now, you have testified that you were going after Democratic voters by this cut into Comal County?

A I represented that was one reason. I also said it was because, to some extent, of the race and also because of the community of interest.

Q Are you now telling us that one of the reasons was the race?

A I said that before. I think I was consistent.

Q As a matter of fact, the cut you made into Comal County

picked up one precinct that was 57 to 100 percent Democratic and another, looks like a precinct-and-a-half, that was 52 to 57 percent; but it picked up a large block of Republican

[4-107]

voters on its way in and then extended on in to pick up a large block of Republican voters in the next, I guess it's a split precinct?

A Yes. That's a split precinct. It shows up here that precinct was Republican, but I wouldn't represent those voters as being Republican.

Q Well, this NCEC index that you have been relying on says they were Republican voters?

A This is 1990, and it doesn't represent the effects of the cut.

Q You didn't know the effects of the cut when you were making the cut, did you?

A We had a fairly good idea about it.

Q You had a good idea, because if you look at Plaintiff's Exhibit 34-H18, the precincts on the way in, it shows a Black and Hispanic population concentration of 70 to 100 percent, and in the little finger that comes up in what's marked on

Exhibit 34-H18 of -- what is that? Can you read that?

A The precinct number?

Q Yes, sir.

A Looks like 0018 or 0016. I think it's 16.

Q On the population map that shows an Hispanic and Black concentration of 50 to 60 percent, does it not?

A It does.

Q Isn't it a fact that cut was made because of race and no

[4-108]

other reason, Mr. Sharman?

A No. Not no other reason. That was a top reason, but it was --

Q A what? A top reason?

A It was one of the major reasons. It was not the reason.

It was also because of the G.O. Political.

I wouldn't represent the fact that it was Democratic as being a primary factor, because the district was fairly Democratic. We weren't worried about that Hispanic district being a Republican district. It's not what I represented we worried about that; and I said race didn't play a factor.

This was a voting rights district, and we did take race into account, but it was not a sole --

Q Let me come back to your answer, sir. Was it a top

reason? Was race a top reason for making the cut the way it
was done?
A. If you took those three reasons and ranked them, I would
say the fact it was geo-political and the race of these
voters were probably equally weighted, and Democratic was
third.
Q. Let's refer to the State's Exhibit 9-B map for Guadalupe
County.
A. Okay.
Q. And look at Guadalupe County on Plaintiff's Exhibit
34-H26.

[A-109]

A. Okay.
Q. Looking at State's Exhibit 9-B, you have told us that
this cut was made to pick up Democrats; isn't that correct?
A. That was one of the reasons, yes.
Q. Well, didn't you tell us that?
JUDGE HITTNER: Which cut? Coming in where?
MR. HIRTZ: District 28.
THE WITNESS: Coming into Guadalupe County.
A. Yes, I said that was one of the reasons. I also said
race, to some extent, played a factor. I also said
geo-political reasons played a factor.

Q Let's compare the outline of that cut on District 28 with the racial composition of the areas cut on Plaintiff's Exhibit 34-6.
A Okay.
Q What is the racial composition of these two precincts to the northern part of the cut? Give me the numbers.
A Well, it shows on this gradiation over here those are 25 to 40 percent.
Q Black and Hispanic?
A That is correct.
Q As you come down the cut, what is the racial composition of the next precinct?
A The same.
Q Of the three precincts in the center, what is the racial

[4-110]
composition of those three precincts?
A Looks like there is four precincts, and those were 70 to 100 percent. That is the Hispanic population.
Q And then there is a jag to the north of precinct 0209. What is the racial or ethnic composition of that precinct?
A Well, begin, that's precincts, I think these precincts are not the same. It doesn't say.
Q My question is, what is the --
A Well, you are representing it as a jag; and if you will

notice on this exhibit here, that was --
Q If you could refer to it by number. State's Exhibit
9-D?
A Yes. It's not on here. I am sorry. That was all Precinct 231. I mean, that's the way the precinct went.
Q So the precinct was split to pick up the Hispanics?
A No, sir. If you look at the map, it was not split. I am saying that that's the way precinct goes. On this map these precincts aren't the same. This is obviously redrawn precincts. The precinct now has been split on this map.
This is 1990, and this does not represent what -- it's says it's based on 1990 population data, but it doesn't say whether --
JUDGE JONES: The NCEC?
THE WITNESS: No, ma'am. It's this other -- I don't know --

[4-111]
MR. HIRTZ: Texas Legislative Counsel.
THE WITNESS: It's Exhibit 34-H26. It does not say what -- I don't even know if those are precinct lines. I think this is --
MR. HICKS: Can I ask what the exhibit number is on that?

MR. HIRTZ: 34-H26.
MR. HICKS: Yours looks different than mine.
MR. HIRTZ: Touche'.
MR. HICKS: The copy you provided me says 1992 VTD.
What's the date yours was printed?
MR. HIRTZ: This one says 1992 VTDs 2.
THE WITNESS: There it is. The VTDs are different.
BY MR. HIRTZ:
Q What's the population concentration of this, whatever this jag to the north is, whether it's a precinct or split precinct?
MR. HICKS: Excuse me. I think we have the same problem going on here, and so I wanted to interrupt to make sure I had the same exhibit.
Mine, that you provided us, says June 21, 1994, and it's a small map, not a big one.
THE WITNESS: This says March 14th.
MR. HIRTZ: Would you look to come over here and look at this map so you can follow the testimony?

[4-112]
MR. HICKS: I would like to get a copy of the exhibit.
MR. HIRTZ: Be delighted to, sir.
BY MR. HIRTZ:
Q What's the racial composition of that jag?
A Well, as I represented, this whole precinct went that

direction, but that portion of the newly redrawn precinct is
60 to 70 percent Hispanic.
Q Then the cut lines come down and pick up more minority
population that is 25 to 40 percent in Guadalupe County.
A Those aren't cuts. Those are whole precincts.
Q Whole precincts. Excuse me. I am referring to 28 as
the cut through the county.
A Okay. I am sorry.
Q Isn't it a fact that when you say you are after
Democrats, you are actually after minority voters in dividing
up Guadalupe County in making the 1991 congressional
redistricting plan, Mr. Sharman?
A That isn't the only reason we would have gotten this
large precinct.
Q Isn't it a fact you were after minority voters, Mr.
Sharman?
A To some extent. I already said that.
Q Let's refer to Midland County in State's Exhibit 9-B,
and I ask you to refer to Plaintiff's Exhibit 34-H34. Do you

[4-113]
have both sets of maps in front of you?
A I do.
Q You testified on your direct examination that you were
after good Democratic voters for Midland.
A I don't recall using those terms. We were after

Democrats, yes.
Q After Democrats?
A Yes.
Q You went in and --
A I also said that minority composition played to some extent; but in this particular district it played less. I would say here that Democrats outweighed the race as a factor because this district was not --
MR. HIRTZ: Move to strike your answer as nonresponsive, Mr. Sharman.
JUDGE JONES: Overruled.
A That's what you asked me. I am sorry.
Q You went in after Democrats and you picked up voting concentrations of Democrats in one, two, part of a third and looks like part of the fourth precinct, did you not?
A Well --
Q Yes or no?
A On this map that's what it represents, yes.
Q But the insert of District 23 went further and picked up --

[4-114]
A Yes. It did.
Q And if you look at the reason for that, it's shown very clearly on the racial maps, Plaintiff's Exhibit 34-H34, is it not?
A Well, that wouldn't be the reason. And you're

representing this NCEC index as the only way to measure Democratic voting strength. This is an up-ballot, more conservative-type election.

Q I can understand why you might want to back off that NCEC at this time.

A I am not backing off at all.

MR. HICKS: I object. He is testifying, not questioning I think him.

JUDGE JONES: Overruled.

BY MR. HIRTZ:

Q But my question is, isn't it a fact that where you went on further with the insert into Midland, you picked up VTD 203A and 0310, both of which show heavy minority concentrations?

A Well, it might help if you look at the 1990 because we didn't have 1992 precincts. It's 203. Yes, we picked up 203 primarily because it had Hispanics.

Q Let's move on to Ector County. I guess we will move back because these are in alphabetical order, State's Exhibit 9-B. Ector is on one of the quarterly maps. Then if we

[4-115]

could move back to Plaintiff's Exhibit 34-H21. Now, in Ector County, again you've testified that

you were, in making the plan, in constructing the plan and drawing the district lines, you were going after Democratic voters?

MR. HICKS: I object. That is not his testimony about Ector County. That's a mischaracterization.

A I said it was a combination of factors. That was a factor, yes.

Q But a more important factor is that in making that cut on up into what on State's Exhibit shows a Republican precinct, you were picking up more minority voters, were you not?

A In that instance, yes; but also a large precinct here was minority we didn't pick up.

Q My question is, the small little do-hickey up here, those are minority voters, are they not?

A I think you are getting confused as intent versus result, and I told you the intent here is multi-faceted. There were a number of factors that went into the cuts, specific cuts, if you want to look at just the specific cut and not the composition and what went in the drawing the whole district. Again, yes, race was a factor because this is a

25 district covered by the Voting Rights Act. These are

[4-116]
1 Hispanics. This is a Hispanic district. So, yes, it was a
2 factor. It was not the sole factor and was not the primary
3 factor.
4 Q A major factor?
5 A It was a factor. It depends on where you are and what
6 district you are looking at how those priorities change. It
7 was floating, and it changed.
8 Q If I directed your attention to State's Exhibit 9-B
9 involving Tom Green County, Montgomery County, Smith County,
10 and Collin County and asked you to compare them with
11 Plaintiff's Exhibits 34-H39, Plaintiff's Exhibits 34-H35 from
12 Montgomery County, Smith County, 34-H 38, and Collin County,
13 34-H17 --
14 A You want me to do all this at the same time or just --
15 Q -- your answers would be approximately the same, that in
16 each of those cases race was a factor, would it not?
17 MR. HICKS: I object.
18 A No.
19 Q It would not be?
20 A No. There was no race racial factor in Collin County

whatsoever that I can remember.
It depends on which district you are talking about.
If you talking about District 4, it wasn't. If you are
talking about District 30, yes, it was to some accident.
Q Let's turn to Collin County in State's Exhibit 9-B.

[4-117]
If you look at Plaintiff's Exhibit 34-H17.
A Okay.
Q Let's wait for Mr. Hicks.
What is it your understanding of your intent in cutting into Collin County?
A I just answered the 30th District race was a factor, but
in the 4th District, which takes a large part of the county,
race was not a factor, and most of that has no racial at all.
There happens to be some in the City of McKinney, but that
was just -- race was not a factor when considering this
district.
It's not a voting rights district. We didn't look
at race, we looked at voting patterns, and looked at that
time fact this was more rural and it was out of the major
growth corridors, et cetera. I mean, there were a lot of
different things, but race was not a factor in the portion
that went into District 4.

Q It was a factor that went into District 30, a major factor, was it not?
A It was more of a factor in District 30.
Q Well, haven't you testified that for District 30 you were trying to draw a majority Black district?
A Yes. That's why I testified it was a factor in that district.
Q A major factor?

[4-118]
A The Voting Rights Act is something we would look at, but if you're talking about one little specific cut, that little specific cut, was that a major factor, no. The district composition as a whole of what the population was was what we were looking at in terms of Voting Rights Act. We didn't look at every single precinct, go precinct by precinct and say, this is a major here, a major factor. You have to look at the district at a whole.
Q I thought you were interested in the voting patterns of the individuals within these, even the split precincts?
A It depends on what what district you are talking about. If it's a solidly Democratic district because it happens to

be a minority district, then that's not as much of a factor.

Q Let's move to Smith County in Exhibit 9-B, and the corresponding racial ethnicity will be 34-H38.

A Okay.

Q Tell me what your understanding of the intent was in Smith County.

A It was to get fairly large Democratic population put into John Bryant's district.

JUDGE HITTNER: Put into which district?

THE WITNESS: John Bryant's district, Your Honor.

BY MR. HIRTZ:

Q You were after Democrats?

A That's correct.

[4-119]

Q But the way in which the cut of this county is drawn, you picked up, according to Exhibit 34-H38, minority voters?

A In this instance, they were one in the same, just about; but we did not pick up all of the Democrats or all of the minorities, even though there was significant concentrations left out, so it was --

JUDGE HITTNER: Well, District 4 is also Democrat; is that correct?

THE WITNESS: That's correct, sir. And there is

some kind of balance going on, we didn't want to totally take all the Democrats out of Ralph Hall's district and make him unable to run for re-election in that district. There is other counties that are split.

(6) (5) (9)

Supreme Court, U.S.
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Nos. 94-805, 94-806, and 94-988

In the Supreme Court of the United States

OCTOBER TERM, 1995

GEORGE W. BUSH, GOVERNOR OF TEXAS, ET AL., APPELLANTS

v.

AL VERA, ET AL.

REV. WILLIAM LAWSON, ET AL., APPELLANTS

v.

AL VERA, ET AL.

UNITED STATES OF AMERICA, APPELLANT

v.

AL VERA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

BRIEF FOR THE UNITED STATES

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53 pp

QUESTION PRESENTED

Whether Districts 18, 29, and 30 in Texas's congressional redistricting plan are narrowly tailored to further a compelling interest.

PARTIES TO THE PROCEEDING

Plaintiffs are Al Vera, Edward Blum, Edward Chen, Pauline Orcutt, Barabara L. Thomas, and Kenneth Powers.

Defendants are George W. Bush, Governor of the State of Texas; Bob Bullock, Lieutenant Governor; Pete Laney, Speaker of the House of Representatives; Dan Morales, Attorney General; and Antonio Garza, Jr., Secretary of State.

Defendant-Intervenors are Rev. William Lawson, Zollie Scales, Jr., Rev. Jew Don Boney, Deloyd T. Parker, Dewan Perry, Rev. Caesar Clark, David Jones, Fred Hofheinz, Judy Zimmerman, Robert Reyes, Angia Garcia, Robert Anguiano, Sr., Dalia Robles, Nicolas Dominguez, Oscar T. Garcia, Ramiro Gamboa, League of United Latin American Citizens, and the United States.

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In the Supreme Court of the United States

OCTOBER TERM, 1995

No. 94-805

GEORGE W. BUSH, GOVERNOR OF TEXAS, ET AL., APPELLANTS

v.

AL VERA, ET AL.

No. 94-806

REV. WILLIAM LAWSON, ET AL., APPELLANTS

v.

AL VERA, ET AL.

No. 94-988

UNITED STATES OF AMERICA, APPELLANT

v.

AL VERA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the three-judge district court (J.S. App. 1a-104a) is reported at 861 F. Supp. 1304.

JURISDICTION

An order of the three-judge district court was entered on September 2, 1994. J.S. App. 105a-106a. That order was amended to afford injunctive relief on September 20, 1994. *Id.* at 107a-108a. A notice of appeal was filed on October 3, 1994. *Id.* at 109a-110a. This Court noted probable jurisdiction on June 29, 1995. 115 S. Ct. 2639 (1995). The jurisdiction of this Court rests on 28 U.S.C. 1253.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Equal Protection Clause of the Fourteenth Amendment provides that "[n]o State shall * * * deny to any person within its jurisdiction the equal protection of the laws." The relevant statutory provisions are Sections 2 and 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 1973c, which are reproduced in the Appendix to the Jurisdictional Statement. J.S. App. 111a-113a.

STATEMENT

This case involves a challenge to the State of Texas's 1991 congressional redistricting plan. A three-judge district court invalidated three districts in the plan that were drawn to afford black and Hispanic voters an opportunity to elect candidates of their choice. The court found that those three districts—one in Dallas County and two in Harris County—placed voters into different districts on the basis of race without sufficient justification in violation of the Equal Protection Clause of the Fourteenth Amendment. The United States, a defendant-intervenor below, has appealed from that judgment. The State of Texas and private intervening defendants have also appealed.

1. a. The State of Texas has a long history of discrimination against racial minorities in voting and in the law

governing elections. See J.A. 359-367; St. Exh. 17; see also *White* v. *Regester*, 412 U.S. 755 (1973) (racially dilutive multimember districts); *Texas* v. *United States*, 384 U.S. 155 (1966) (per curiam) (poll tax); *Terry* v. *Adams*, 345 U.S. 461 (1953) (white primary); *Smith* v. *Allwright*, 321 U.S. 649 (1944) (same); *Nixon* v. *Condon*, 286 U.S. 73 (1932) (same); *Nixon* v. *Herndon*, 273 U.S. 536 (1927) (same). That well-documented history of discrimination prompted Congress to extend Section 5 of the Voting Rights Act to Texas in 1975. See S. Rep. No. 295, 94th Cong., 1st Sess. 25-30 (1975). No district in Texas with a majority of white residents has ever elected a black member to Congress. St. Exh. 17, at 55. Nor has any black state senator ever been elected from a majority-white district. *Id.* at 51-52. Only two black state house members have been elected from districts with white population majorities. *Id.* at 51. Similar data exists regarding the failure of Hispanic candidates to win elections in districts with white majorities. J.A. 252; U.S. Exh. 1095 (letter dated Nov. 12, 1995, at 2).

b. Between 1980 and 1990, the population of Texas grew from approximately 14.2 million to almost 17 million. J.S. App. 9a. As a result, Texas was allocated three additional congressional seats in 1991, giving it a total of 30 seats. *Ibid.* The growth of the Hispanic and black populations in Texas during the 1980s was particularly substantial. *Id.* at 9a-10a. During that decade, the Hispanic population increased by more than 45%, and the black population increased by nearly 17%, while the Anglo population increased by 10%. *Id.* at 10a. By 1990, Hispanics constituted 22.5% of the total population, blacks constituted 11.6% of the population, and the percentage of Anglos had declined to 60.5% of the State's total population. *Id.* at 9a.

Much of Texas's population growth during the 1980s occurred in Harris County (in which Houston is located),

Dallas County (in which Dallas is located), and Bexar County (in which San Antonio is located). J.S. App. 10a. Increased Hispanic and black population accounted for most of the growth in those counties. *Id.* at 10a-12a. In recognition of the growth of population in Harris, Dallas and Bexar Counties, the Texas legislature placed Texas's three new congressional districts in those counties and drew the new districts in a way that would afford Hispanics and blacks in those areas the opportunity to elect candidates of their choice despite the State's history of racial discrimination in voting. *Id.* at 19a. Considered statewide, the plan enacted by the State in 1991 gave Hispanics an opportunity to elect candidates of their choice in seven of the State's 30 districts and blacks an opportunity to elect candidates of their choice in two districts. See Pl. Exh. 36, at 27.

c. In addition to affording the black and Hispanic minorities opportunities to overcome Texas's history of racial discrimination in voting, the State's 1991 plan also reflected the legislature's commitment to two other principles—that congressional districts would all contain the same number of residents and that district lines would be drawn to protect the reelection prospects of all incumbent representatives. J.A. 246-249; 1 Tr. 85; 3 Tr. 163, 215; U.S. Exh. 1071 Supp. at 12. The State has traditionally viewed incumbency protection as a very important consideration in redistricting. J.S. App. 12a-13a. Following the 1960 Census, for example, the State gained a congressional seat, but redistricted by creating an at-large seat in order to allow all incumbents' districts to remain intact. *Id.* at 12a. Later in the 1960s, Texas created a district that traversed a large portion of the State in order to protect an incumbent. *Id.* at 12a-13a. During redistricting in the 1970s, a delegation of state legislators working on redistricting flew to Washington,

D.C., to meet with members of the Texas congressional delegation on a group and individual basis. *Id.* at 13a. A participant in the redistricting process in the 1980s and 1990s testified that, "[f]or the most part, the only traditional districting principles that have ever operated here are that incumbents are protected and each party grabs as much as it can." *Id.* at 13a n.9.

In the 1991 redistricting, the state legislature agreed to protect the seat of every sitting representative. J.S. App. 26a. Each Member of Congress and each state legislator with an interest in a particular district had an opportunity to help draw the lines of the district during the mapping process. *Id.* at 25a-26a. Representatives and legislators drew on several sources to assist them in that process. The legislature's computers could provide past election results on the redistricting maps on a precinct-by-precinct level; racial information about population was available at the census block level. *Id.* at 27a. Representatives also knew the partisan makeup of various areas from their own election experience and from driving through those areas. 3 Tr. 177-179. In addition, Democratic representatives and legislators had access to a database that provided political information on a household-by-household basis; they could therefore obtain the number of Democratic primary voters residing in any proposed district. *Id.* at 179. Incumbent congressional representatives and state legislators contemplating a run for Congress would often go to a legislative mapping room to evaluate proposed districts and to suggest changes that would improve their chances of winning. *Id.* at 168.

2. This appeal involves districts drawn in Dallas and Harris Counties. In deciding how to draw the districts in those two counties, the legislature took into account its obligations under the Voting Rights Act. J.S. App. 18a-22a. Believing that the Voting Rights Act required it to

do so, the legislature created a new black opportunity district in Dallas County and a new Hispanic opportunity district in Harris County. *Id.* at 18a-21a.[1] In addition, the legislature reconfigured a district in Harris County in which blacks had been able to elect a candidate of their choice over the past two decades so that they would continue to have that opportunity. *Id.* at 19a-21a.

The population of Dallas County is sufficient to support three and one-third districts. U.S. Exh. 1085. Blacks make up approximately 20% of the population in the County. U.S. Exh. 1084. In the State's plan, Dallas County is divided among seven districts. Four of those districts draw most of their population from Dallas County. Pl. Exh. 34P. The State's plan affords blacks in Dallas County an opportunity to elect a candidate of their choice in one of those four districts. Pl. Exh. 4C.

The Harris County population is sufficient to support five congressional districts. U.S. Exh. 1085. Hispanics make up approximately 23% of the population of the County, and blacks make up approximately 19% of the population. U.S. Exh. 1084. In the State's plan, Harris County is divided among seven congressional districts. Three of those districts draw all of their population from Harris County and one draws most of its population from it. Pl. Exh. 34P. The State's plan contains one district in Harris County that provides blacks with an opportunity to elect a candidate of their choice and one district that provides Hispanics with such an opportunity. J.A. 185, 229.

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[1] An opportunity district is a district in which the relevant minority group has a meaningful opportunity to elect the representative of its choice despite racial discrimination in voting either because it constitutes a voting majority in the district or because it constitutes a sizable minority that can elect its preferred candidate because some non-minorities will vote for the minority-preferred candidate.

a. District 30 is the black opportunity district in Dallas County. That district has a core area that contains half of the district's population and that is 69% black. J.S. App. 29a; J.A. 335. The district contains seven additional areas, each of which is highly irregular in shape. *Ibid.* The population of each of those areas is between 20% and 38% black. *Ibid.* Overall, District 30 is 50% black in total population, 47.1% black in voting-age population (VAP), and 50.3% black in citizen voting-age population (CVAP). St. Exh. 14; J.S. App. 30a. The black community in Dallas County believed a 50% black population district to be necessary to ensure that it would have an opportunity to elect a candidate of its choice. *Id.* at 22a.

The legislature decided to draw a black opportunity district in Dallas County in order to comply with the Voting Rights Act. J.S. App. 18a-20a, 89a-90a. The legislature knew that it was possible to create a reasonably compact black opportunity district in Dallas County. At least two such plans were presented to it. J.A. 139 (Johnson plan); Pl. Exh. 33 (Owens-Pate plan); see J.S. App. 59a-60a, 78a, 88a. The legislature was also aware that blacks in Dallas County are politically cohesive and that whites in the County usually vote as a bloc against black-preferred candidates. Shortly before the 1991 redistricting process began, a federal district court had found that voting in Dallas was racially polarized. *Williams* v. *City of Dallas*, 734 F. Supp. 1317 (N.D. Tex. 1990). Legislators involved in the redistricting process were aware of that finding. See Lawson Exhs. 7, 11.

Although it was possible to draw a reasonably compact black opportunity district in Dallas County, political considerations prevented that result. In practice, the lines of District 30 were the product of compromise among three incumbent elected officials: Eddie Bernice Johnson, Martin Frost, and John Bryant. J.S. App. 35a-38a. John-

son, who is black, is now the congressional representative from District 30. *Id.* at 30a. In 1991, Johnson was a Democratic state senator from Dallas County and the chair of the State senate's committee on congressional redistricting. *Id.* at 30a-33a. Frost and Bryant were incumbent white Members of Congress from Dallas. *Id.* at 33a. Prior to the 1991 redistricting, Frost's and Bryant's districts had divided heavily Democratic south Dallas County between them. Pl. Exh. 28C; 3 Tr. 187.

Early in the redistricting process, Johnson suggested a plan that included a reasonably compact district in Dallas with a 44% black total population. J.A. 139. That district would have afforded black voters an opportunity to elect the candidate of their choice. J.A. 234 & n.21; 5 Tr. 21. Johnson's proposed district was rejected, however, because it included substantial portions of Frost's and Bryant's existing districts, as well as Frost's and Bryant's own residences, in the new District 30. J.S. App. 35a & n.22, 59a. Another plan submitted to the redistricting committee, the "Owens-Pate plan," also drew a reasonably compact black opportunity district in Dallas. Pl. Exh. 33; J.S. App. 59a, 88a. That plan required eight incumbents to run against each other in four districts, however, and did not have the votes to pass. 4 Tr. 84, 179.

The ultimate shape of District 30 was dictated by a compromise designed to create a black opportunity district in which Johnson could run for Congress while still permitting Bryant and Frost to maintain a favorable partisan political mix in their districts. 1 Tr. 56-81, 3 Tr. 185-207. Bryant and Frost both objected to losing black and white Democratic voters in the southern area of proposed District 30. J.S. App. 36a. Frost especially objected to losing Democrats from the racially mixed Grand Prairie area who had supported him in past elections. *Id.* at 36a & n.23; 3 Tr. 188-189. Frost and Bryant had an interest in

retaining black voters because those voters had voted overwhelmingly Democratic in the past. J.S. App. 37a-38a. In order to satisfy those concerns of Frost and Bryant, several concentrations of black voters were removed from District 30 as it was originally proposed by Johnson and retained in Frost's and Bryant's Districts. 1 Tr. 80. District 30 was thus required to extend into north Dallas County in order to contain sufficient total population and sufficient black population to enable it to be a black opportunity district. J.A. 149; 3 Tr. 187-189. That led the State to create the irregular extensions that characterize the borders of District 30.

b. District 18 is the black opportunity district in Harris County; District 29 is the Hispanic opportunity district. The lines separating Districts 18 and 29 are highly irregular and closely track Hispanic and black population concentrations. J.S. App. 40a-41a. District 18 is 51% black in total population, 48.6% black in VAP, and 52.1% black in CVAP. St. Exh. 14; J.S. App. 40a. District 29 is 60.6% Hispanic in total population, 55.4% Hispanic in VAP, and 42.5% Hispanic in CVAP. *Ibid.*

The state legislature decided to draw one Hispanic opportunity district and one black opportunity district in Harris County in order to comply with the Voting Rights Act. J.S. App. 18a-19a, 89a-90a. In prior redistrictings, blacks and Hispanics had been combined to form a majority of the population in District 18. St. Exh. 17, at 44, 55-56. As of the 1980 redistricting, the district's population was 40.8% black and 31.2% Hispanic. See *Seamon* v. *Upham*, 536 F. Supp. 931, 984 (E.D. Tex.) (three-judge court), vacated and remanded on other grounds, 456 U.S. 37 (1982) (per curiam). Throughout the 1980s, blacks and Hispanics had voted together to elect black representatives to Congress. St. Exh. 17, at 55-56.

By 1990, however, the coalition between blacks and Hispanics had begun to disintegrate. J.S. App. 22a-23a. The state legislature was aware in 1991 that black and Hispanic voters no longer voted together consistently, as several recent elections in Houston had demonstrated (Lawson Exh. 26; Pl. Exhs. 4C, 15H). At the outset of the 1991 redistricting, Hispanics in Harris County made clear that they opposed the creation of districts in which blacks and Hispanics were combined to form a majority. J.S. App. 23a. Hispanic leaders believed that the significant increase in Hispanic population during the 1980s justified the creation of a new Hispanic opportunity district in Harris County; they favored a plan that would create such a district while retaining a black opportunity district. *Id.* at 42a-43a. A consensus emerged in the legislature to support that proposal. *Id.* at 42a.

The minority populations in Harris County are sufficiently concentrated to permit the drawing of either one reasonably compact black opportunity district or one reasonably compact Hispanic opportunity district. J.A. 197-198 (black); J.A. 199-200 (Hispanic). It is unclear whether it was possible to draw both a reasonably compact black opportunity district and a reasonably compact Hispanic opportunity district simultaneously. The Owens-Pate plan set out to accomplish that result. Questions were raised, however, about the compactness of the black opportunity district that Owens-Pate provided. 2 Tr. 132. And the Hispanic opportunity district provided by that plan afforded significantly smaller opportunity for Hispanics to elect the representative of their choice than did the plan ultimately enacted by the state legislature. 4 Tr. 205. Nonetheless, the Owens-Pate plan would have provided blacks an opportunity to elect a representative of their choice in one district; it would have provided Hispanics with at least some opportunity to elect a

representative of their choice in another district; and the districts in that plan were much more compact than the districts ultimately enacted by the legislature. See Pl. Exh. 32a; J.S. App. 88a. As noted above, however, the Owens-Pate plan, which required incumbents to run against each other, was rejected.

As was the case with District 30 in Dallas County, political considerations significantly affected the ultimate shape of Districts 18 and 29. A logical way to reconfigure District 18 would have been to model it upon the majority-black state senate district in Harris County. J.S. App. 44a & n.29. A proposal to do that, however, was blocked by Mike Andrews, an incumbent Member of Congress from a majority-white district in Harris County, who would have lost a large part of his congressional district under that proposal. *Id.* at 44a. In addition, Craig Washington, then the incumbent Member of Congress for District 18, insisted that new District 18 move out of the Sunnyvale area of southern Harris County and into northern Harris County in order to avoid including an opposition candidate in his district. 4 Tr. 45-46.

Negotiations between Roman Martinez and Gene Green, state legislators who aspired to run for Congress in the new District 29, also influenced the shape of the two districts. J.S. App. 42a & n.27. Green wanted the new district to include a group of non-Hispanic voters who had voted for him as a state senator. *Id.* at 44a-45a. That required the drawing of highly irregular lines in order to capture sufficient additional Hispanic voters to retain the Hispanic population in the district that the legislature believed was necessary for Hispanics to have an opportunity to elect a candidate of their choice. *Id.* at 45a.

3. The Attorney General of the United States precleared the State's 1991 redistricting plan under Section 5 of the Voting Rights Act. J.A. 343-344. The State's plan

was then challenged by plaintiffs who alleged that it violated Section 2 of the Voting Rights Act and a constitutional prohibition against partisan gerrymandering. J.S. App. 16a-17a. In *Terrazas* v. *Slagle*, 789 F. Supp. 828 (W.D. Tex. 1991) (three-judge court), aff'd, 112 S. Ct. 3019, 113 S. Ct. 29 (1992); 821 F. Supp. 1162 (W.D. Tex. 1993) (three-judge court), a federal district court rejected those claims.

Appellees then filed the present suit. Appellees are six Texas voters, five of whom live in the districts at issue on this appeal. J.S. App. 6a. They alleged that 24 of the State's 30 congressional districts, including the three districts at issue here, were the product of racial gerrymandering and lacked sufficient justification. *Id.* at 4a, 6a-7a. The district court permitted the United States, six African-American voters, the League of United Latin American Citizens, and seven Hispanic voters to intervene as defendants. *Id.* at 7a. After a trial, the district court concluded that Districts 18, 29, and 30 were unconstitutional. *Id.* at 4a-5a. The court upheld the 21 other districts challenged by appellees. *Id.* at 5a.

The district court held that redistricting is suspect under *Shaw* when it results in "bizarrely shaped districts whose boundaries were created for the purpose of racially segregating voters." J.S. App. 65a. Applying that test, the court held that the districts at issue here called for strict scrutiny. The court specifically found that the boundaries of District 30 in Dallas County were convoluted and were deliberately made that way to include a population that was 50% black. *Id.* at 77a-81a. The court also found that the lines dividing Districts 18 and 29 in Harris County appear "utterly irrational—unless one factors in the overlap between these district boundaries and the racial makeup of their underlying populations." *Id.* at 83a-84a. The court concluded that "[t]he goal of separating His-

panic and African-American residents from each other and from the white population for the purposes of voting led to the creation of [Districts 18 and 29]." *Id.* at 84a.

Applying strict scrutiny, the court found that none of the three districts was narrowly tailored to achieve a compelling state interest. The court stated that "[i]t is not obvious to this court that the State *justifiably* feared potential liability under § 2 or § 5 of the Voting Rights Act if it failed to protect District 18 and set aside [Districts 29 and 30] for minority Congressmen." J.S. App. 89a-90a (footnote omitted). In that regard, the court found that Districts 18, 29, and 30 do not satisfy the Section 2 compactness requirement set forth in *Thornburg* v. *Gingles*, 478 U.S. 30 (1986). J.S. App. 89a n.54. Nevertheless, the court found that, "[to comply with the Voting Rights Act] and other reasons, the Legislature created the districts," and, "[a]ccording to *Shaw*, this is permissible if the districts are narrowly tailored to comply with Voting Rights Act concerns." *Id.* at 90a.

On the issue of narrow tailoring, the court held that, "[b]ecause a *Shaw* claim embraces the district's appearance as well as its racial construction, narrow tailoring must take both these elements into account." J.S. App. 91a. For that reason, the court concluded that, "to be narrowly tailored, a district must have the least possible amount of irregularity in shape, making allowances for traditional districting criteria." *Ibid.* Because the court found that the State could have constructed alternative minority opportunity districts that were much more geographically compact than Districts 18, 29, and 30, the court concluded that those districts were not narrowly tailored to further the State's interest in complying with the Voting Rights Act. *Id.* at 92a-93a. The court rejected the contention that the State's interest in protecting incumbents was relevant to the narrow tailoring inquiry,

reasoning that the argument "implicitly equat[ed] incumbent protection with a compelling state interest." *Id.* at 91a. The court noted that "*Shaw* nowhere refers to incumbent protection as a traditional districting criterion." *Id.* at 69a.

4. On September 2, 1994, the district court entered an order permitting the 1994 elections to be held under the existing redistricting plan, but directing the State to prepare a new plan by March 15, 1995. J.S. App. 105a-106a. On September 20, 1994, the court entered an order amending the September 2 order so that it enjoined the use of the redistricting plan for the 1996 elections. *Id.* at 107a-108a. On December 23, 1995, this Court stayed the district court's orders pending disposition of the appeal.

SUMMARY OF ARGUMENT

The district court erred in holding that Districts 18, 29, and 30 do not satisfy strict scrutiny. Those districts are narrowly tailored to further Texas's compelling interests in complying with Section 2 of the Voting Rights Act and ameliorating the effects of racially polarized voting.

A. Texas had a compelling interest in drawing one black opportunity district in Dallas County and one black and one Hispanic opportunity district in Harris County in order to comply with Section 2 of the Voting Rights Act. Section 2 is a constitutional exercise of Congress's power to enforce the Fourteenth and Fifteenth Amendments and furthers the compelling interest in eliminating the effects of racial discrimination in voting. State compliance with Section 2 furthers that same compelling interest.

A State has a compelling interest in creating minority opportunity districts in order to comply with Section 2 when it has a firm basis in evidence for believing that such districts are required by that provision. Such a firm basis exists when (1) members of the minority group are suffi-

ciently numerous and concentrated to have the opportunity to elect candidates of their choice in a reasonably compact district; (2) the minority group is politically cohesive; (3) whites have engaged in significant bloc voting against minority-preferred candidates; and (4) the failure to create a minority opportunity district would leave minority group members substantially underrepresented when compared to their percentage in the relevant population. *Thornburg* v. *Gingles*, 478 U.S. 30, 50-51 (1986); *Johnson* v. *DeGrandy*, 114 S. Ct. 2647, 2658 (1994). Texas had sufficient evidence to satisfy those requirements for the three districts challenged in this case.

The district court did not address that evidence. It held that, because the districts actually enacted in the State's plan do not satisfy the *Gingles* compactness requirement, Section 2 could not provide any justification for creating them. To have a compelling interest in complying with Section 2, however, the State was not required to show that the districts it actually drew satisfied the *Gingles* compactness requirement. The question at the compelling interest stage of the inquiry is whether reasonably compact minority opportunity districts could have been drawn. When such districts could have been drawn and there is a strong basis in evidence for the State to believe that the other preconditions are established, the State has a compelling interest in drawing minority opportunity districts in order to comply with Section 2. The question whether the State has furthered that interest in a constitutionally permissible manner is a question of narrow tailoring.

B. In addition to its interest in complying with the Voting Rights Act, the State also had a compelling interest in ameliorating the consequences of racial bloc voting attributable to past and present discrimination. The State was faced with persistent patterns of racially

polarized voting. It could create minority opportunity districts in order to ensure that racially polarized voting did not cause minority group members to be severely underrepresented.

C. Districts 18, 29, and 30 were narrowly tailored to further the State's two compelling interests. A State's plan is narrowly tailored if it uses racial considerations no more than is reasonably necessary in order to achieve its compelling interests. A State violates that standard if, in creating minority opportunity districts, it (1) creates more such districts than necesary to comply with the Voting Rights Act or to eliminate the effects of racially polarized voting; (2) packs substantially more minority voters than necessary into those districts; or (3) departs from its traditional districting criteria more than is necessary in order to satisfy its compelling or other legitimate redistricting interests. The districts at issue here did not violate any of those restrictions.

The district court held that the challenged districts are not narrowly tailored because the State could have drawn minority opportunity districts that were more compact. If the State had drawn those other districts, however, it would have had to sacrifice its strong traditional interest in protecting incumbents. In order to protect incumbents while achieving its compelling interest in creating minority opportunity districts, the State was required to draw irregularly shaped districts.

The district court's conclusion that *Shaw* requires a State to draw compact districts even if that means that the State cannot protect incumbents is incorrect and based on a misreading of *Shaw*. The district court's conclusion conflicts with this Court's repeated holdings that federal courts must not substitute their own redistricting preferences for those of the States. It also seriously under-

mines Congress's goal of encouraging voluntary compliance with Section 2.

Because the district court applied incorrect legal standards, its judgment should be reversed or, alternatively, the decision should be vacated and the case remanded for a decision under the correct legal standards.

ARGUMENT

Introduction

In their briefs, the State of Texas and the Lawson/LULAC intervenors argue that the lower court erred in its decision to apply strict scrutiny to the congressional districts at issue on this appeal. In *Miller* v. *Johnson*, 115 S. Ct. 2475 (1995), this Court held that strict scrutiny is required if "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district. To make this showing, a plaintiff must prove that the legislature subordinated traditional race-neutral districting principles * * * to racial considerations." *Id.* at 2488. Plaintiffs will satisfy this "demanding" threshold standard only where they can "show that the State has relied on race in substantial disregard of customary and traditional districting practices." *Id.* at 2497 (O'Connor, J., concurring).

The decision below that strict scrutiny was applicable here was made before the *Miller* decision and the district court did not have the benefit of the *Miller* opinion in making that judgment. The record in this case shows that protection of incumbents is a customary and traditional Texas redistricting practice, and the district court found that incumbency protection played an important role in the final shape of the challenged districts. The district court nevertheless refused to consider as legally significant

whether and to what extent incumbency protection explained the challenged districts (J.S. App. 66a-72a). That refusal was inconsistent with *Miller*.

This Court, however, need not reach the question whether strict scrutiny was applicable here, because the district court's ruling must be reversed in any event. As we show below, the district court made significant legal errors in applying strict scrutiny to the facts of this case. Had the district court applied strict scrutiny correctly, it would have concluded that the challenged districts are constitutional regardless of whether strict scrutiny was applicable. The Court can dispose of the case on that basis. See *United States* v. *Paradise*, 480 U.S. 149, 166-167 (1987) (plurality opinion) (declining to decide whether court-ordered race-conscious relief was subject to strict scrutiny since the relief ordered satisfied such scrutiny).

THE STATE'S REDISTRICTING PLAN SATISFIES STRICT SCRUTINY

This Court recently went out of its way "to dispel the notion that strict scrutiny is 'strict in theory, but fatal in fact.'" *Adarand Constructors, Inc.* v. *Pena*, 115 S. Ct. 2097, 2117 (1995). In doing so, the Court recognized that "[t]he unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it." *Ibid.* Accordingly, "[w]hen race-based action is necessary to further a compelling interest, such action is within constitutional restraints if it satisfies the 'narrow tailoring' test this Court has set out in previous cases." *Ibid.* The minority opportunity districts at issue in this case are narrowly tailored to further Texas's compelling interests in complying with Section 2 of the Voting

Rights Act and in ameliorating the effects of persistent racially polarized voting.

A. The State Had A Compelling Interest In Drawing One Black Opportunity District In Dallas County And One Black And One Hispanic Opportunity District In Harris County In Order To Comply With Section 2 Of The Voting Rights Act

1. The State drew Districts 18, 29, and 30 in order to comply with Section 2 of the Voting Rights Act. In *Miller* v. *Johnson*, 115 S. Ct. 2475, 2490-2491 (1995), the Court left open the question whether compliance with the Voting Rights Act, standing alone, provides a compelling justification for governmental action. The background to the enactment of Section 2 and this Court's prior cases answer that question and demonstrate that a State has a compelling interest in complying with Section 2.

Congress adopted the Voting Rights Act in 1965 "to banish the blight of racial discrimination in voting, which ha[d] infected the electoral process in parts of our country for nearly a century." *South Carolina* v. *Katzenbach*, 383 U.S. 301, 308 (1966). After a thorough investigation, Congress determined that earlier attempts to remedy racial discrimination in voting had failed because of "unremitting and ingenious defiance of the Constitution" in some parts of the country. *Id.* at 309. Congress therefore adopted "sterner and more elaborate measures," *ibid.*, including Section 5's requirement that covered jurisdictions preclear their voting changes with federal officials and Section 2's requirement that all jurisdictions avoid abridgements of the right to vote on the basis of race. *Id.* at 315-316.

When it subsequently extended the Voting Rights Act in 1982, Congress concluded that its provisions continued to be necessary in order to prevent voting discrimination.

See S. Rep. No. 417, 97th Cong., 2d Sess. 9-10 (1982). At that time, Congress heard evidence that minority group members continued to experience direct impediments to voting, including physical intimidation of voters and candidates, reregistration requirements, voter purges, changes in the location of polling places, and inconvenient voting and registration hours. *Id.* at 10 n.22 (citing testimony from House and Senate hearings). Congress also heard evidence that, between 1970 and 1980, discrimination in voting had become much more sophisticated and involved purposeful efforts to dilute minority voting strength through such practices as annexations, the use of at-large elections, majority vote requirements, numbered places, and the shifting of district boundary lines. *Id.* at 10. Finally, Congress was presented with "overwhelming evidence" that racial politics continued to dominate the political process in some communities. *Id.* at 33-34.

In response to those continuing threats to minority voting rights, Congress extended Section 5 of the Act and amended Section 2 to prohibit voting practices that have discriminatory "results." 42 U.S.C. 1973(a). Congress provided that discriminatory results occur when minority group members have "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. 1973(b). Congress recognized that compliance with that new statutory prohibition would sometimes require taking race into account in drawing district lines. S. Rep. No. 417, *supra*, at 30-34. Congress believed, however, that such a prohibition was necessary; it concluded that prohibiting practices with discriminatory results was essential to prevent intentional discrimination that would otherwise "go undetected, uncorrected and undeterred" because of the inordinate difficulty of proving a discriminatory purpose. *Id.* at 36,

40. Congress also concluded that "voting practices and procedures that have discriminatory results perpetuate the effects of past purposeful discrimination." *Id.* at 40. Congress's conclusions were supported by abundant evidence. As one court has stated, "[e]mpirical findings by Congress of persistent abuses of the electoral process, and the apparent failure of the intent test to rectify those abuses, were meticulously documented and borne out by ample testimony." *Major* v. *Treen*, 574 F. Supp. 325, 347 (E.D. La. 1983) (three-judge court). Congress therefore enacted the amendment to Section 2 to further its compelling interest in eliminating racial discrimination and its effects. See *Adarand*, 115 S. Ct. at 2117; *City of Richmond* v. *J.A. Croson Co.*, 488 U.S. 469, 503-504, 509 (1989); *United States* v. *Paradise*, 480 U.S. 149, 167 (1987) (opinion of Brennan, J.); *id.* at 186 (Powell, J., concurring); *Local 28 of Sheet Metal Workers' Int'l Ass'n* v. *EEOC*, 478 U.S. 421, 480 (1986) (opinion of Brennan, J.); *id.* at 485 (Powell, J., concurring); *Bob Jones Univ.* v. *United States*, 461 U.S. 574, 604 (1983).

This Court's decisions firmly establish that Congress had authority under the Constitution to enact the 1982 amendment to Section 2. This Court has made clear that, even though the Fourteenth and Fifteenth Amendments themselves prohibit only intentional discrimination, Congress has broad authority under Section 5 of the Fourteenth Amendment and Section 2 of the Fifteenth Amendment to ban voting practices that have discriminatory effects. *City of Rome* v. *United States*, 446 U.S. 156, 173-178 (1980) (upholding Section 5 prohibition against retrogressive voting changes); *Oregon* v. *Mitchell*, 400 U.S. 112 (1970) (upholding nationwide ban on literacy tests); *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966) (upholding ban on use of literacy tests as applied to citizens educated in Puerto Rico); *South Carolina* v. *Katzenbach*,

383 U.S. at 334 (upholding the suspension of literacy tests in certain jurisdictions). In particular, Congress may proscribe voting practices with discriminatory effects when they either pose a "risk of purposeful discrimination" or "perpetuate[] the effects of past discrimination." *City of Rome*, 446 U.S. at 176, 177; *South Carolina* v. *Katzenbach*, 383 U.S. at 334. Congress concluded that both of those dangers were present here. The amendment to Section 2 therefore falls within Congress's broad powers to enforce the Fourteenth and Fifteenth Amendments. *Jones* v. *City of Lubbock*, 727 F.2d 364, 372-375 (5th Cir. 1984) (upholding the constitutionality of Section 2); *United States* v. *Marengo County Comm'n*, 731 F.2d 1546, 1556-1563 (11th Cir. 1984) (same).

The principles underlying the Court's decisions in *Shaw* v. *Reno*, 113 S. Ct. 2816 (1993), and *Miller* v. *Johnson*, *supra*, do not cast doubt upon the constitutionality of Section 2. The Court explained in *Shaw* and *Miller* that government action that "separate[s] its citizens into different voting districts on the basis of race" is suspect because it may be based on "the offensive and demeaning assumption that voters of a particular race, because of their race, 'think alike, share the same political interests, and will prefer the same candidates at the polls.'" *Miller*, 115 S. Ct. at 2486 (quoting *Shaw*, 113 S. Ct. at 2827). Section 2 makes no such assumptions. *Gingles*, 478 U.S. at 46. It requires race-based districting only when there is empirical evidence that minority voters in the particular area are *in fact* politically cohesive and that the majority *in fact* usually votes as a bloc to defeat the minority's preferred candidates. *Growe* v. *Emison*, 113 S. Ct. 1075, 1085 (1993). Section 2 therefore does not require a State to act on the basis of the stereotypes that *Shaw* and *Miller* condemn.

Because Section 2 is a constitutional exercise of Congress's authority to eliminate racial discrimination and its effects, state compliance with its requirements furthers that same compelling interest. Thus, when Section 2 requires the drawing of minority opportunity districts, the State has a compelling interest in drawing such districts.

2. In order to show that it had a compelling interest in drawing minority opportunity districts so as to satisfy Section 2, a State is required to show that it had "a strong basis in evidence of the harm being remedied." *Miller*, 115 S. Ct. at 2491; *Croson*, 488 U.S. at 500. That standard is satisfied by evidence that provides a "reasonable basis to believe" that the failure to create the districts would violate Section 2. *Miller*, 115 S. Ct. at 2492.

The "strong basis in evidence" standard ensures that government actors engaging in race-conscious activity do so only for well-founded reasons. See *Johnson* v. *Transportation Agency*, 480 U.S. 616, 652-653 (1987) (O'Connor, J., concurring in the judgment); *Wygant* v. *Jackson Bd. of Educ.*, 476 U.S. 267, 290-291 (1986) (O'Connor, J., concurring in part and concurring in the judgment). At the same time, it promotes voluntary compliance with the law by giving States a margin of safety against the "competing hazards" of liability to minorities if they do not create minority opportunity districts and liability to others if they do. *Id.* at 291 (O'Connor, J., concurring in part and concurring in the judgment). The need to provide such a margin of safety is particularly strong in redistricting, for "the States must have discretion to exercise the political judgment necessary to balance competing interests" in the districting process. *Miller*, 115 S. Ct. at 2488.

3. This Court has not yet decided what constitutes a strong basis in evidence for a State's belief that Section 2 requires it to draw minority opportunity districts. This

Court's Section 2 cases, however, furnish substantial guidance on that issue. In *Gingles*, the Court held that plaintiffs challenging multimember districts under Section 2 must establish three preconditions: that the minority group "is sufficiently large and geographically compact to constitute a majority in a single-member district"; that the minority group "is politically cohesive"; and that "the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances * * * —usually to defeat the minority's preferred candidate." 478 U.S. at 50-51. The Court has subsequently held that those same preconditions apply to challenges to single-member district plans. See *Growe*, 113 S. Ct. at 1084. After establishing the three *Gingles* preconditions, plaintiffs must also prove vote dilution from the totality of circumstances. *Johnson* v. *DeGrandy*, 114 S. Ct. 2647, 2657-2658 (1994).

In *DeGrandy*, the Court held that, in a single-member district case, the compactness and numerosity precondition "requires the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice." 114 S. Ct. at 2655. The Court left open the question which characteristics of the minority population are relevant in deciding whether the minority group could constitute a majority (*e.g.*, age, citizenship). *Id.* at 2655-2656. It also left open the related question whether the first precondition can be satisfied by proof that the minority group could constitute a sizable minority (rather than a majority) in a district and could elect candidates of its choice by attracting some cross-over votes. *Id.* at 2656. Those questions had been reserved in prior cases as well. See *Growe*, 113 S. Ct. at 1083 n.4 (noting that lower courts have looked to voting population rather than to total population to determine whether the

minority could constitute a majority and that *Gingles* refers to voting population, but reserving the question); *Voinovich* v. *Quilter*, 113 S. Ct. 1149, 1154-1155 (1993) (reserving question whether minority that could not constitute a majority but could nevertheless elect candidates of its choice in an alternative district can state a Section 2 claim); *Growe*, 113 S. Ct. at 1084 n.5 (same); *Gingles*, 478 U.S. at 46 n.12 (same).

In *DeGrandy*, the Court also made clear that the presence or absence of "substantial proportionality" between the number of majority-minority districts and minority members' share of the relevant population is a significant factor in assessing the totality of circumstances. 114 S. Ct. at 2658; *id.* at 2664 (O'Connor, J., concurring) (proportionality is always relevant to a vote dilution claim, but never dispositive). If a State's plan affords substantial proportionality, it may be difficult for plaintiffs to establish that they have been denied an equal opportunity to participate and elect representatives of their choice. *Id.* at 2658-2659. On the other hand, evidence that a State's plan leaves minority group members substantially underrepresented when compared to their percentage in the relevant population may provide strong evidence of vote dilution. *Id.* at 2664 (O'Connor, J., concurring).

In light of *Gingles* and *DeGrandy*, and the continuing uncertainty concerning a State's precise Section 2 obligations, a State has a strong basis in evidence for believing that Section 2 requires it to create minority opportunity districts when: (1) members of the minority group are sufficiently numerous and concentrated to have the "potential to elect" candidates of their choice in a reasonably compact district (even if they would not constitute an absolute voting majority), *Gingles*, 478 U.S. at 50 n.17; (2) the minority group is politically cohesive; (3)

whites engage in significant bloc voting; and (4) the failure to create a minority opportunity district would leave minority group members substantially underrepresented when compared to their percentage in the relevant population. There may be other circumstances in which the State could demonstrate a firm basis in evidence for creating minority opportunity districts, but proof of those four factors ordinarily will be sufficient. A State cannot be expected to make the same totality-of-the-circumstances inquiry at the time it redistricts that a court is able to make after an adversary trial. Nor should the State be prevented from resolving uncertain Section 2 issues in favor of the reading that is more, rather than less, protective of minority voting rights.

4. Texas had a strong basis in evidence for believing that Section 2 required it to draw one black opportunity district in Dallas County and one black and one Hispanic opportunity district in Harris County.

a. In Dallas County, it was possible to draw a reasonably compact district with a sufficiently large black population to provide black voters an opportunity to elect the candidates of their choice. Then-state Senator Eddie Bernice Johnson presented to the legislature a plan containing such a district centered in South Dallas with a 44% black population. J.A. 139. The district court found that Johnson's district was "truly compact and contiguous" because it was located in a compact geographical area, kept identifiable neighborhoods intact, and did not split precincts. J.S. App. 78a. The evidence also showed that Johnson's district would have afforded blacks an opportunity to elect a representative of their choice. 5 Tr. 21; J.A. 234 & n.21. The Owens-Pate plan considered by the legislature also contained a reasonably compact black opportunity district. J.A. 141. The existence of those two alternative districts established that the State had a

strong basis for believing that the first *Gingles* precondition would be satisfied if it failed to draw a black opportunity district in Dallas County.

Texas also had a strong basis for believing that the second and third *Gingles* preconditions—black cohesion and white bloc voting—were satisfied in Dallas County. The State acted against the backdrop of a long history of judicial findings that polarized voting has existed in Dallas County. See, *e.g.*, *White* v. *Regester*, 412 U.S. 755, 765-767 (1973); *Lipscomb* v. *Wise*, 399 F. Supp. 782, 785-786 (N.D. Tex. 1975), rev'd, 551 F.2d 1043 (5th Cir. 1977), rev'd, 437 U.S. 535 (1978). Indeed, just one year prior to the 1991 redistricting, a federal district court invalidated the election scheme for the Dallas City Council under Section 2, finding, on the basis of an exhaustive analysis, that black voters in Dallas were politically cohesive and that white bloc voting usually defeated the candidates preferred by blacks. *Williams* v. *City of Dallas*, 734 F. Supp. 1317, 1387-1394 (N.D. Tex. 1990). Expert testimony presented by the State in the present case confirmed the existence of racially polarized voting in Dallas County both in the areas covered by District 30 and in the areas not included in that district. 4 Tr. 187; see also J.A. 227. Legislators involved in redistricting were aware of the findings in *Williams* and of the persistence of racially polarized voting in Dallas County. Lawson Exhs. 7, 11; J.A. 251.

Finally, if the State had not drawn a black opportunity district in Dallas County, blacks in that area would have been very substantially underrepresented when compared to their percentage of the Dallas County population. Even though blacks constitute 20% of the Dallas County population and the Dallas County population is sufficient to support three and one-third congressional districts, blacks in Dallas County would not have been able to elect a single representative of their choice. See pp. 6, 7-9, *supra*.

The State therefore had a strong basis in evidence for its belief that Section 2 required it to create a black opportunity district in Dallas County.[2]

b. The State also had a strong basis for believing that Section 2 required it to draw one black and one Hispanic opportunity district in Harris County. The State presented evidence that black voters in Harris County were sufficiently numerous and concentrated to allow the drawing of one reasonably compact black opportunity district. See J.A. 197-198. Likewise, the State's evidence showed that it was possible to draw a reasonably compact Hispanic opportunity district in Harris County. See J.A. 199-200. Because many concentrations of black voters in Harris County are in close proximity to concentrations of Hispanic voters, those two hypothetical districts overlap. Given those demographic patterns, it is unclear whether the State could have drawn both a reasonably compact black opportunity district and a reasonably compact Hispanic opportunity district simultaneously.

Notwithstanding that uncertainty, Texas had a strong basis in evidence for concluding that both minority groups satisfied the first *Gingles* precondition. Section 2 protects

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[2] A federal district court held in 1984 that a plan that failed to draw a majority-black congressional district in Dallas did not violate Section 2. See *Seamon* v. *Upham*, No. P-81-49-CA (E.D. Tex. Jan. 30, 1984). The court relied on evidence that black voters had "significant influence" on elections in the majority-white districts in southern Dallas County. Slip op. 15-16. At the time of the 1980 redistricting, however, Dallas County supported less than three districts. U.S. Exh. 1085. Moreover, *Seamon* was decided before the district court had issued its decision in *Williams* on the extent of racial polarization in Dallas County. The legislature was entitled to take into account the fact that the Dallas County population now supports three and one-third districts and to rely on the more recent *Williams* findings in concluding that Section 2 now requires a black opportunity district.

all racial minority groups and provides States with no clear basis on which to choose which of two similarly situated minority groups to protect from dilution. If the State had drawn only a black opportunity district, it would have been vulnerable to a Section 2 suit brought by Hispanics; if it had drawn only an Hispanic opportunity district, it would have been vulnerable to a suit brought by blacks. In that situation, rather than arbitrarily preferring one group over the other, the State reasonably concluded that its Section 2 responsibilities required it to provide both black and Hispanic voters an opportunity to elect their preferred candidates—even if that required a departure from compactness.

The State had a strong basis to believe that the second and third *Gingles* preconditions were satisfied in Harris County as well. The State's expert, Dr. Lichtman, concluded that elections in what is now District 29 were the "most extremely polarized" of any he examined—Hispanic voters voted for Hispanic candidates 89% of the time, and Hispanic candidates received only a 5% crossover from white voters. 4 Tr. 186-187. The area now covered by District 18 also exhibited a high degree of polarization between black and white voters. 4 Tr. 187-188; see also J.A. 225-227. Legislators involved in redistricting were well aware of the history of racially polarized voting in Harris County. J.A. 251.

The legislators involved in redistricting were also aware that the black/Hispanic coalition in Harris County—which had previously enabled black and Hispanic voters to elect the candidate of their choice in the 18th District—had begun to disintegrate. As the district court noted (J.S. App. 22a-23a), the breakdown of the black/Hispanic coalition had exhibited itself in a series of divisive local elections beginning in 1989. J.A. 251; Lawson Exh. 26. Dr. Lichtman's analysis confirmed that "His-

panic and black voters did not usually both provide majority support for minority candidates." J.A. 228-229. Texas therefore had a strong basis for concluding that black voters would lack an opportunity to elect representatives of their choice in a district designed to afford Hispanics such an opportunity and that Hispanics would lack an opportunity to elect candidates of their choice in a district designed to afford blacks such an opportunity. In contrast to the situation during the previous decade, only by drawing two minority opportunity districts in Harris County could the State in 1991 afford each group an opportunity to elect a representative of its choice.

Finally, if the State had not drawn either an Hispanic or a black opportunity district in Harris County, blacks and Hispanics in Harris County would have been very substantially underrepresented when compared to their percentage in the Harris County population. Hispanics make up approximately 23% of the Harris County population and blacks make up approximately 19% of the Harris County population, and the population of Harris County is sufficient to support five districts. Nevertheless, neither group would have had an opportunity to elect a representative of its choice if no minority opportunity districts were drawn. See pp. 6, 9-11, *supra*. The evidence therefore establishes each of the prerequisites necessary to support the conclusion that Texas had a compelling interest in drawing one black and one Hispanic opportunity district in Harris County.

5. The district court did not purport to decide whether Texas had a strong basis in evidence for its conclusion that Section 2 required it to draw one black opportunity district in Dallas County and one black and one Hispanic opportunity district in Harris County. J.S. App. 86a-93a. The district court held instead that, because the districts actually drawn by the State do not satisfy the *Gingles*

compactness requirement, Section 2 could provide no justification for drawing those districts. *Id.* at 89a n.54. That reasoning is seriously flawed. For a State to invoke its compelling interest in creating minority opportunity districts in order to comply with Section 2, there must be evidence that reasonably compact districts could have been drawn. A State is not required, however, to enact a plan that incorporates the geographically compact districts that led it to conclude that Section 2 required it to create minority opportunity districts in the first place. *Shaw* v. *Hunt*, 861 F. Supp. 408, 454 n.50 (E.D.N.C. 1994) (three-judge court), probable juris. noted, 115 S. Ct. 2639 (1995). The district court's contrary view reflects a basic misunderstanding of the *Gingles* compactness requirement.

Gingles held that Section 2 plaintiffs must show that a reasonably compact district can be drawn in order to establish a violation of that provision. 478 U.S. at 50. Absent such a showing, the Court held, plaintiffs cannot show that the discriminatory aspects of the existing election system have caused their inability to elect candidates of their choice. *Id.* at 50 n.17. *Gingles* did not hold, however, that States are required to remedy violations of Section 2 by drawing compact districts. Nor does the statute impose such a requirement. Section 2 prohibits the denial of an equal opportunity to elect representatives of choice. See 42 U.S.C. 1973(b). So long as a State's plan provides that opportunity, Section 2 obligations are satisfied; for Section 2 purposes, it does not matter whether the State satisfies its statutory obligations by utilizing compact or noncompact districts. See *Upham* v. *Seamon*, 456 U.S. 37, 42 (1982) (per curiam) (federal court must defer to a State's remedial plan so long as it satisfies the substantive requirements of federal law); cf. *McGhee* v. *Granville County*, 860 F.2d 110, 120-121 & n.11 (4th Cir. 1988) (county may remedy violation of

Section 2 caused by multimember districts by increasing the size of the body or through limited voting scheme).

Thus, at the compelling interest stage of the inquiry, the relevant question under *Gingles* is whether reasonably compact minority opportunity districts could have been drawn. When such districts could have been drawn and the other preconditions for a strong basis in evidence are also established, the State has a compelling interest in drawing minority opportunity districts in order to comply with Section 2. The question whether the districts the State then draws to further that interest are drawn in a permissible way is a question of narrow tailoring. Because reasonably compact minority opportunity districts could have been drawn in Dallas and Harris Counties and the other relevant preconditions for a strong basis in evidence were established, Texas had a compelling interest in drawing minority opportunity districts in order to comply with Section 2.

B. The State Also Had A Compelling Interest In Drawing One Black Opportunity District In Dallas County And One Black And One Hispanic Opportunity District In Harris County In Order To Counteract The Effects Of Racially Polarized Voting

The State's decision to draw three districts in Dallas and Harris Counties in which minority voters would have an opportunity to elect the candidates of their choice was supported by an additional compelling interest: the interest in ameliorating the effects of racially polarized voting attributable to past and present racial discrimination. This Court has recognized that, even absent a federal statutory duty, a State has a compelling interest in taking race-conscious action to remedy identified discrimination within its jurisdiction if it has a strong basis for believing that its action is necessary to

achieve that remedial purpose. See *Adarand*, 115 S. Ct. at 2117; *Croson*, 488 U.S. at 491-493, 509 (opinion of O'Connor, J.). Thus, a State has a compelling interest in eliminating the effects of racially polarized voting attributable to past and present discrimination, even when the Voting Rights Act does not require such action.

Texas has a long history of racial discrimination in voting and districting. After the close of Reconstruction, the state legislature drew district lines in predominantly black counties in a manner designed to minimize the effects of black votes in legislative and judicial elections. St. Exh. 17, at 4. At the turn of the Twentieth Century, Texas instituted a poll tax, which remained in place until it was struck down by a federal court in 1966. *Texas* v. *United States*, 384 U.S. 155 (1966) (per curiam); see St. Exh. 17, at 13. Texas replaced the poll tax with a system requiring annual voter registration; the new system was then itself invalidated by a federal court. *Beare* v. *Smith*, 321 F. Supp. 1100 (S.D. Tex. 1971) (three-judge court), aff'd *sub nom. Beare* v. *Briscoe*, 498 F.2d 244 (5th Cir. 1974); see J.A. 359; St. Exh. 17, at 13. Texas also maintained a whites-only primary system for over half of this Century; the State abandoned that system only after four separate decisions of this Court invalidated different forms of that system. *Terry* v. *Adams*, 345 U.S. 461 (1953); *Smith* v. *Allwright*, 321 U.S. 649 (1944); *Nixon* v. *Condon*, 286 U.S. 73 (1932); *Nixon* v. *Herndon*, 273 U.S. 536 (1927); see J.A. 359; St. Exh. 17, at 5-12. In 1973, this Court upheld a district court's conclusion that a state-wide legislative reapportionment employing multimember districts purposefully diluted black and Hispanic voting strength in violation of the Fourteenth Amendment. *White* v. *Regester*, 412 U.S. 755. Since that decision, courts have found that various levels of state government have diluted black and Hispanic voting strength in violation of Section

2. St. Exh. 17, at 18-23. And as recently as 1991, Texas's redistricting plan for the State House of Representatives deliberately fragmented and packed the Hispanic population in certain areas of the State, which led the Attorney General to interpose an objection under Section 5. J.A. 365-366.

Texas could reasonably believe that the significant racial polarization present in the State is, at least in part, a consequence of that long and deplorable history of voting discrimination. The State could also have reasonably believed that the persistent and severe pattern of racially polarized voting was "circumstantial evidence of racial bias operating through the electoral system to deny minority voters [in Dallas and Harris Counties] equal access to the political process." *Nipper* v. *Smith*, 39 F.3d 1494, 1524 (11th Cir. 1994) (en banc) (plurality opinion), cert. denied, 115 S. Ct. 1795 (1995). When a State has "essentially become a 'passive participant' in a system of racial exclusion practiced" by private parties within its jurisdiction, it may "take affirmative steps to dismantle such a system." *Croson*, 488 U.S. at 492 (opinion of O'Connor, J.). As Justices White, Stevens, and then-Justice Rehnquist observed in applying that principle to the redistricting context, a State is not "powerless to minimize the consequences of racial discrimination by voters when it is regularly practiced at the polls." *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey*, 430 U.S. 144, 167 (1977) (opinion of White, J.). In such circumstances, a State may take steps to ensure that minority group members are not substantially underrepresented when compared to their percentage in the relevant population. *Ibid.* Thus, even if it had not been possible to satisfy the *Gingles* compactness requirement in Dallas and Harris Counties, the drawing of three minority opportunity districts would have served Texas's

compelling interest in countering the effects of racial polarization at the polls.

The district court discounted that compelling interest because it found "no evidence" that the State drew the challenged districts in order to "eradicat[e] particular instances of racial inequality." J.S. App. 89a n.53. The district court misapprehended the legal significance of the evidence before it. As the district court itself noted, the record before it contained ample evidence that Texas felt compelled to draw minority opportunity districts as a remedy for the consistent racially polarized voting in Dallas and Harris Counties. *Id.* at 9a. Racial polarization that leaves minority group members severely under-represented when compared to their percentage in the population is an "instance[] of racial inequality" that the State has a compelling interest in remedying.

C. Districts 18, 29, And 30 Are Narrowly Tailored To Achieve The State's Compelling Interests

1. In *Shaw* v. *Reno*, this Court held that a plan is not narrowly tailored if it goes "beyond what [is] reasonably necessary" to achieve the State's compelling interests. 113 S. Ct. at 2831. The Court did not fully elaborate on the meaning of that standard. In cases involving employment goals and public contracting set asides, however, the Court has set forth several factors that are relevant to the narrow tailoring inquiry in those areas. See *Adarand*, 115 S. Ct. at 2118; *Croson*, 488 U.S. at 507-508; *Paradise*, 480 U.S. at 171 (opinion of Brennan, J.); *id.* at 187 (Powell, J., concurring). Those factors include: the efficacy of alternative remedies, the flexibility and duration of the remedy, the relationship of a remedial goal to the proportion of minority group members in the relevant labor pool, and the impact of the remedy on third parties. *Id.* at 171 (opinion of Brennan, J.).

Those principles suggest three narrow tailoring requirements in the present context. First, a State may not create more minority opportunity districts than required by the State's interest in complying with the Voting Rights Act or eliminating the effects of racial polarization. See *Shaw* v. *Hunt*, 861 F. Supp. at 446; *Hays* v. *Louisiana*, 839 F. Supp. 1188, 1207 (W.D. La. 1993) (three-judge court), vacated and remanded on other grounds, 114 S. Ct. 2731 (1994). Thus, when the State draws districts along racial lines, it must do so only to the extent required by its compelling interests and not for reasons of "simple racial politics." *Shaw* v. *Reno*, 113 S. Ct. at 2824.

Second, a State may not "pack" minority voters by creating districts that "contain substantially larger concentrations of minority voters than is reasonably necessary to give minority voters a reasonable opportunity to elect representatives of their choice in those districts." *Shaw* v. *Hunt*, 861 F. Supp. at 446; accord *Hays*, 839 F. Supp. at 1207. That requirement ensures that voters are not treated on the basis of race any more than is necessary to meet the State's compelling interests. See *Miller*, 115 S. Ct. at 2485-2486; *Shaw* v. *Reno*, 113 S. Ct. at 2828.

Finally, consideration must be given to the extent to which the districts drawn by a State substantially depart from its customary redistricting practices. Just as substantial departures from traditional redistricting practices may signal that race is the predominant motive in a State's redistricting plan, see *Miller*, 115 S. Ct. at 2486, so too such substantial departures may show that the State has given race more of a role in shaping districts than is necessary to meet its compelling interests. Thus, when a district substantially departs from a State's traditional districting principles, the State may be required to counter the inference that race was given a greater role

than necessary by showing that the boundaries utilized were necessary either to achieve its compelling interest or to achieve its compelling interest while simultaneously achieving other legitimate redistricting goals.

Texas's plan is narrowly tailored under those principles. The plan creates no more than the number of minority opportunity districts in Harris and Dallas Counties required by Section 2 and necessary to counteract the effects of polarized voting and prevent severe underrepresentation of blacks and Hispanics in those Counties.

The State's plan does not needlessly pack minorities into the challenged districts. The two black opportunity districts contain bare black population majorities. St. Exh. 14. And while the Hispanic opportunity district has a 60.6% Hispanic population, that district is only 42.5% Hispanic in citizen voting-age population. *Ibid.* Although the State might possibly have constructed districts with somewhat lower minority percentages and still have provided the relevant minority groups an opportunity to elect representatives of their choice, a State is not required to act with mathematical precision in fulfilling its compelling interests. Particularly at the time of redistricting, a State can only roughly calculate what may be necessary. A State may also properly seek to provide some margin of safety in case its estimates prove faulty. The districts drawn by Texas in this case contain minority percentages that are well within the range of what the State could reasonably have thought appropriate to ensure a meaningful opportunity to elect. See *Ketchum* v. *Byrne*, 740 F.2d 1398, 1413, 1417 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985); *Jeffers* v. *Clinton*, 756 F. Supp. 1195 (E.D. Ark. 1990) (three-judge court), aff'd mem., 498 U.S. 1019 (1991).

The challenged districts are more irregular in shape than districts previously drawn in Texas. Those irregularities, however, were necessary to create districts that furthered the State's compelling interest in creating minority opportunity districts while at the same time serving the State's interest in protecting incumbents Bryant and Frost (and potential candidate Johnson) in Dallas County and incumbent Andrews (and potential candidates Green and Martinez) in Harris County. See pp. 7-9, 11, *supra*. Because of the importance that the State attached to protecting incumbents (and aspiring candidates from the state legislature), the State could not have advanced its compelling interest in creating minority opportunity districts except by drawing irregularly shaped districts.

2. The district court nonetheless concluded that Districts 18, 29, and 30 were not narrowly tailored. The court held that, "to be narrowly tailored, a district must have the least possible amount of irregularity in shape, making allowances for traditional districting criteria." J.S. App. 91a. It reasoned that, "[b]ecause a *Shaw* claim embraces the district's appearance as well as its racial construction, narrow tailoring must take both these elements into account." *Ibid.* Under the court's approach, a State must not only demonstrate a compelling interest for creating a minority opportunity district, but it must also demonstrate a separate compelling justification for drawing an irregular minority opportunity district. *Ibid.* Noting that "*Shaw* nowhere refers to incumbent protection as a traditional districting criterion," *id.* at 69a, the district court then held that protecting incumbents is not the kind of compelling interest that the State may pursue at the expense of compactness, *id.* at 68a-69a, 88a, 91a. Because the court concluded that the State could have drawn substantially more compact

minority opportunity districts, and because the court rejected incumbency protection as a permissible basis for departing from compactness, the court held that the three districts at issue here were not narrowly tailored. *Id.* at 86a-93a. That conclusion was incorrect for several reasons.

a. First, the court's view that a *Shaw* claim embraces a district's appearance as well as its racial composition is based on a misunderstanding of the nature of a *Shaw* claim. This Court held in *Miller* that "[s]hape is relevant [to a *Shaw* claim] not because bizarreness is a necessary element of the constitutional wrong or a threshold requirement of proof, but because it may be persuasive circumstantial evidence that race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale in drawing its district lines." 115 S. Ct. at 2486. There is therefore no basis for the district court's holding that a State is required to provide a compelling justification for a district's appearance as well as its racial composition. The district court's rule " 'confuse[s] the purpose of *Shaw*'s strict scrutiny standard,' which is not to ensure that the state creates wise or aesthetically-pleasing districts, but to ensure that it 'is not covertly pursuing forbidden ends' when it draws district lines." *Shaw* v. *Hunt*, 861 F. Supp. at 451.

As we have discussed, a district's irregular appearance may signal that race has been given greater weight than necessary to further a State's compelling interest. A State may have to counter that inference by showing that its approach was necessary to further the State's compelling interest in creating minority opportunity districts while protecting other legitimate redistricting interests at the same time. But that is very different from requiring the State to provide an *additional compelling*

justification for its decision to draw irregularly shaped districts.

b. Second, by holding that Texas could not pursue its desire to protect incumbents at the expense of creating compact districts, the district court usurped the State's power to determine its own redistricting priorities. "It is well settled that 'reapportionment is primarily the duty and responsibility of the State.'" *Miller*, 115 S. Ct. at 2488 (quoting *Chapman* v. *Meier*, 420 U.S. 1, 27 (1975)); see also *Voinovich*, 113 S. Ct. at 1156-1157; *Growe*, 113 S. Ct. at 1081. Redistricting is a "highly political task," *id.* at 1080, and decisions concerning which districting criteria to apply involve essentially political "choices about the nature of representation," *Burns* v. *Richardson*, 384 U.S. 73, 92 (1966). Unless a state redistricting plan violates the Constitution or a federal statute, federal courts must defer to state reapportionment policy, no matter how unwise that policy may appear to be. See *Upham*, 456 U.S. at 42 (per curiam).

Consistent with those principles, a State may legitimately seek to protect incumbents in redistricting and may permissibly conclude that furthering that interest is more important to it than drawing compact districts. This Court's decision in *White* v. *Weiser*, 412 U.S. 783 (1973), is particularly instructive on that point. In *Weiser*, the Court held that a lower court had erred in imposing as a remedy for a one-person, one-vote violation a redistricting plan that disregarded the State's policy of incumbency protection in order to create compact districts. *Id.* at 793-797. Explaining that the State had made the political decision that protecting incumbents was a more important state interest than maintaining compact districts, the Court held that "the District Court's preferences do not override whatever state goals were embodied in" the State's plan. *Id.* at 796. The district court's holding in

this case that Texas could not give greater weight to incumbency protection than it gave to compactness conflicts with *Weiser*, as well as with other cases resting on the same basic principle of federalism. See *Karcher* v. *Daggett*, 462 U.S. 725, 740 (1983) ("avoiding contests between incumbent Representatives" is a legitimate State redistricting policy); *Gaffney* v. *Cummings*, 412 U.S. 735, 751-754 & n.18 (1973) (State may draw irregular district lines, splitting political subdivisions, in order to allocate seats to major political parties in proportion to their statewide strength); *Burns*, 384 U.S. at 89 n.16 (State may draw district lines to avoid contests between incumbents).

c. The district court's approach to the issue of narrow tailoring also undermines the goal of encouraging voluntary compliance with the law. As a practical matter, many jurisdictions may be unwilling to meet their obligations under Section 2 voluntarily if they must sacrifice what they deem to be an important policy of protecting incumbents in order to do so. This case is a good example. The district court found that, in order to protect incumbents, district boundaries throughout Texas frequently "divided counties, cities, neighborhoods, and regions." J.S. App. 68a. Incumbency protection is responsible for the fact that at least two Texas districts that are overwhelmingly white in composition are as irregularly shaped as the districts at issue here. Lawson J.S. 4-5. In its 1991 redistricting, Texas did what it took to protect incumbents. J.S. App. 68a. If relatively compact districts provided such protection, compact districts were drawn. If substantial departures from compactness were needed to protect incumbents, that was done as well. And if extreme departures from compactness were required, even extreme departures were utilized. A State that has undertaken such strong efforts to protect incumbents is

unlikely voluntarily to abandon that concern in order to comply with Section 2.

The district court's narrow tailoring approach fails to take that political reality into account. If Congress's purposes are to be advanced, however, a State should not be forced to choose between creating minority opportunity districts in order to comply with Section 2 and protecting incumbents. A State should instead be permitted to accomplish both goals simultaneously, even if that means that highly irregular districts will be drawn. The district court's contrary view is "at odds with this Court's and Congress' consistent emphasis on 'the value of voluntary efforts to further the objectives of the law.'" *Wygant*, 476 U.S. at 290 (O'Connor, J., concurring in part and concurring in the judgment).

d. The district court's use of district shape in applying the narrow tailoring requirement also raises serious equal protection concerns. Under the district court's standard, a State is free to depart from principles of compactness whenever it chooses—except when it wishes to further a compelling interest in avoiding the dilution of minority voting strength. That result seriously distorts the purposes of the Equal Protection Clause. "[T]he driving force behind the adoption of the Fourteenth Amendment was the desire to end legal discrimination against blacks." *Miller*, 115 S. Ct. at 2497 (O'Connor, J., concurring). A State that has, over time, systematically given greater weight to incumbency protection than to compactness in districting decisions should not be precluded from following the same course when it decides to further its compelling interest in complying with Section 2.

3. The district court sought to cast doubt on the legitimacy of the State's pursuit of incumbency protection on three grounds. None is persuasive.

First, the district court sought to distinguish this Court's cases recognizing the legitimacy of incumbency protection on the ground that Texas had pursued that goal in a particularly aggressive manner. J.S. App. 67a-68a. The court stated that "never before have districts been drawn on a block-by-block or neighborhood- or town-splitting level to corral voters perceived as sympathetic to incumbents or to exclude opponents of the incumbents." *Ibid.* The court found it particularly objectionable that "[t]he Legislature obligingly carved out districts of apparent supporters of incumbents, as suggested by the incumbents, and then added appendages to connect their residences to those districts." *Id.* at 68a. According to the court, "[t]he final result seems not one in which the people select their representatives, but in which the representatives have selected the people." *Ibid.*

Texas's zeal in protecting incumbents may raise serious policy concerns. In light of *Weiser*, however, there is no basis in the Constitution for rejecting the kind of incumbency protection practiced in this case. Texas may not be acting wisely in believing that protecting incumbents is more important than other districting considerations. But those are precisely the kinds of "choices about the nature of representation" (*Burns*, 384 U.S. at 92) that are entrusted to States under the Constitution. A federal district court may not usurp that state function under the guise of conducting a narrow tailoring inquiry.

Second, the district court characterized the United States' argument as "implicitly equating incumbent protection with a compelling state interest." J.S. App. 91a. The United States does not regard incumbency protection as a compelling state interest, and we have not argued that it is. Rather, our argument is that, in pursuing its compelling interest in creating minority opportunity

districts in order to comply with Section 2, a State may legitimately decide to give greater weight to incumbency protection than to drawing compact districts.

Finally, the district court concluded that the State's policy of protecting incumbents involved impermissible race-based action because Democratic incumbents, particularly Frost and Bryant in Dallas, sought to include black voters in their districts. J.S. App. 79a-81a, 85a. As the evidence shows, however, Frost and Bryant generally strove to keep in their districts as many Democratic areas that they had previously represented as possible—regardless of the race of the voters in the areas. *Id.* at 35a-38a & n.23. For example, Frost and Johnson fought vigorously over a largely white Democratic portion of Grand Prairie before compromising and splitting the area between them. U.S. Exh. 1071, at 37-40.

It is true that many of the areas over which Frost, Bryant, and Johnson struggled most intensely were predominantly black areas. But that is because those areas were heavily Democratic and had provided consistent support to Frost and Bryant in previous elections. J.S. App. 35a-38a & n.23. In fact, evidence indicated that 97% of black voters in the Dallas-Fort Worth area had voted in the Democratic primary. *Id.* at 37a. As one witness cited by the district court explained, "Frost and Bryant were not concerned about the race of these voters. They just wanted to hold onto enough Democrats to assure reelection." *Id.* at 36a.

Given those undisputed facts about the motivation of Frost and Bryant, the district court erred as a matter of law in holding that the inclusion of black voters in their districts constituted impermissible racial discrimination. Under this Court's decisions, to constitute impermissible discrimination under the Equal Protection Clause, action must taken because of, rather than merely with knowledge

of, a person's race. See *Miller*, 115 S. Ct. at 2488; see *Personnel Administrator* v. *Feeney*, 442 U.S. 256, 279 (1979). Here, the evidence showed that black voters were moved into Frost's and Bryant's districts because of their party affiliation, not because of their race.[3]

* * * * *

For the reasons discussed, the district court applied an incorrect legal standard on both the compelling interest and narrow tailoring prongs of strict scrutiny. Moreover, the evidence we have discussed shows that the State's plan satisfies strict scrutiny under the correct legal standards. The district court, however, has not yet issued findings of fact under the correct standards and this Court may not wish to perform that function in the first instance. Accordingly, the district court's judgment should be reversed or, alternatively, the decision should be vacated and the case remanded for a decision under the correct legal standards.

---

[3] While incumbency protection is a legitimate redistricting criterion, it would not justify a plan that dilutes minority voting strength in violation of Section 2. See S. Rep. No. 417, *supra*, at 29 & n.117. Moreover, as courts have recognized, an asserted interest in protecting incumbents can mask intentional discrimination against minority voters. See *Garza* v. *County of Los Angeles*, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 498 U.S. 1028 (1991); *id.* at 778-779 (Kozinski, J., concurring and dissenting in part); *Ketchum*, 740 F.2d at 1408; *Rybicki* v. *State Bd. of Elections*, 574 F. Supp. 1082, 1109 (N.D. Ill. 1982) (three-judge court). Here, the State sought to serve both its interest in avoiding diluting minority voting strength and its interest in protecting incumbents.

CONCLUSION

The judgment of the district court should be reversed or, alternatively, the decision should be vacated and the case remanded for a decision under the correct legal standards.

Respectfully submitted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

REV. WILLIAM LAWSON ET AL., APPELLANTS,

ROBERT REYES, ET AL., APPELLANTS

v.

AL VERA, ET AL., APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

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QUESTIONS PRESENTED

I. Whether Texas' Congressional Districts 18, 29 and 30 should have been sustained even before reaching the issue of strict scrutiny because race did not predominate in the construction of these districts, where:

   a. "ideally" compact versions of Districts 18, 29 and 30 were rejected for incumbent protection and other non-racial reasons;

   b. the versions of Districts 18, 29 and 30 adopted by the Texas Legislature were no more irregular than majority-white districts; and,

   c. areas included within Districts 18, 29 and 30 share common interests other than race?

II. Whether Texas' Congressional Districts 18, 29 and 30 are narrowly tailored to serve a compelling interest?

III. Whether plaintiffs who have proved no injury have standing to challenge a State districting plan as a "racial gerrymander"?

PARTIES TO THE PROCEEDING

The State Appellants (No. 94-805) are Texas State officials George W. Bush, Governor, Bob Bullock, Lieutenant Governor, Pete Laney, Speaker of the House of Representatives, Dan Morales, Attorney General, and Antonio O. Garza, Jr., Secretary of State.

The Lawson Appellants (No. 94-806) are Rev. William Lawson, Zollie Scales, Jr., Rev. Jew Don Boney, Deloyd T. Parker, Dewan Perry, Rev. Caesar Clark, David Jones, Fred Hofheinz and Judy Zimmerman.

The LULAC Appellants (No. 94-806) are Robert Reyes, Angie Garcia, Robert Anguiano, Sr., Dalia Robles, Nicolas Dominguez, Oscar T. Garcia, Ramiro Gamboa and League of United Latin American Citizens (LULAC) of Texas.

The United States is the Appellant in No. 94-988.

Appellees are Al Vera, Edward Blum, Edward Chen, Pauline Orcutt, Barbara L. Thomas and Kenneth Powers.

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OPINION BELOW

The August 17, 1994 opinion below is reported at 861 F. Supp. 1304 and is reproduced at TX J.S. 5a-84a.[1]

JURISDICTION

Timely Notices of Appeal were filed by the Lawson Appellants on October 3, 1994 and by the LULAC Appellants on September 29, 1994 (amended on November 4, 1994), respectively. TX J.S. 1a, 4a. The Court has jurisdiction under 28 U.S.C. § 1253.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Equal Protection Clause of the Fourteenth Amendment and §§ 2 and 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973, 1973c, are set out at TX J.S. 2, 87a-88a.

STATEMENT

Proceedings Below

Appellees, six Republican Texas voters (including an unsuccessful Republican candidate in the 1992 general election in District 18) filed suit on January 26, 1994, challenging at least 24 of Texas' 30 Congressional districts. *See* TX J.S. 9a & n.3. They claimed that Texas illegally used race and ethnicity in constructing Congressional districts and

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[1]This brief uses the following abbreviations:

TX J.S. - Jurisdictional Statement and Appendix of State Appellants
J.A. - Joint Appendix
TR - Trial Transcript, volume:page
TX Ex. - State Defendants' Trial Exhibit
Lawson Ex. - Lawson Defendant-Intervenors' Trial Exhibit
LULAC Ex. - LULAC Defendant-Intervenors' Trial Exhibit
U.S. Ex. - United States' Trial Exhibit
PX - Plaintiffs' Trial Exhibit
Dep. - Deposition

failed to follow what they alleged were "traditional" districting principles. TX J.S. 10a.

The Lawson Appellants, six African-American and three white voters residing in Districts 18 and 30; the LULAC Appellants, the League of United Latin American Citizens (LULAC) of Texas and seven Hispanic voters, one of whom resides in District 29; and the United States, were permitted to intervene as defendants. *Id.* at 11a.

The court below ruled that three districts -- Texas' only two African-American opportunity districts[2] (Nos. 18 and 30) and one Hispanic opportunity district (No. 29) -- violated the Equal Protection Clause of the Fourteenth Amendment.[3] The court upheld the constitutionality of 21 other challenged districts (including new District 28), of which 18 are majority-white and three are majority-Hispanic.[4]

---

[2]The terms "majority-minority district" and "opportunity district" are used interchangeably, to refer to districts that give a single minority, either African-American or Hispanic, an opportunity to elect a candidate of its choice. All of the Hispanic opportunity districts in the 1991 plan have a Hispanic majority in both population and voting-age population (VAP). District 18 has African-American population of 50.9% and VAP of 48.6%, while District 30 has African-American population of 50.0% and VAP of 47.1%. J.A. 158, 160.

[3]Districts 29 and 30 were first created after the 1990 Census. District 18 had been a minority-opportunity district since 1971 and its boundaries were modified after the 1990 Census.

[4]On September 20, 1994, the court entered an order, *nunc pro tunc* to September 2, 1994, enjoining the use of the current districts for the 1996 elections. On December 29, 1994, this Court stayed the district court's injunction. On June 29, 1995, this Court noted probable jurisdiction, thus leaving the stay in effect.

Facts

A. Major Factors Shaping Texas' 1991 Congressional Redistricting

The State of Texas was apportioned three additional Congressional seats as a result of population growth revealed by the 1990 census, increasing its total to 30. The Legislature decided to center the three new districts in three of the four counties with the largest population growth, Harris, Dallas and Bexar.[5]

The district court concluded, on the basis of largely undisputed evidence, that four types of factors combined to shape the districts at issue in this case.

1. *Incumbent protection.*

More than a year in advance, the Texas Congressional Delegation began work with the "overriding objective" of "incumbency protection," seeking "to influence the Legislature to draw districts that would maximize their chances for reelection," TX J.S. 23a, 24a. The court below noted that the Legislature "openly acknowledged" this fact: "The incumbents 'have practically drawn their own districts. Not practically, they have.'" *Id.* at 24a (quoting Senator Johnson, Chair, Subcommittee on Congressional Districts).

Traditionally, protection of incumbents has prevailed over compactness in Texas Congressional redistricting. *See* TX J.S. 15a (post-1960 creation of additional, statewide at-large seat, to maintain status of all incumbents; configuration of district running from the Houston area through rural east Texas into the southern ends of both Tarrant and Dallas

---

[5]Most of that growth was attributable to increases in Hispanic and African-American population. TX J.S. 13a. Tarrant County, which is adjacent to Dallas County, was the other top growth area, *id.*, so the new Dallas district reflected the growth in this region.

Counties to protect seat of "Tiger Teague;"[6] post-1970 redistricting "notable at least in part because of the great lengths to which the state legislature went to solicit the views of incumbent congressmen"). The court below cited Ted Lyon, a former member of the Texas House and Senate involved in post-1980 and post-1990 redistricting: "[C]ompactness is not a 'traditional districting principle' in Texas. For the most part, the only traditional districting principles that have ever operated here are that incumbents are protected and each party grabs as much as it can." *Id.* at 15a n.9.[7]

In the 1991 redistricting, new technology permitted the Legislature to go further than previously "on a block-by-block or neighborhood- or town-splitting level to corral voters perceived as sympathetic to incumbents or to exclude opponents of incumbents." *Id.* at 55a. As the court below found, citing the construction of invalidated Districts 18 and 29:

> [M]any *incumbent protection boundaries* sabotaged traditional redistricting principles as they routinely divided counties, cities, neighborhoods, and regions.

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[6]One member of the Texas Legislature remarked during the 1967 floor debates "that if you were to drive down Interstate 45 from the northern border of C.D. 6 in southern Dallas and Tarrant counties to the southern border of the district in the northern suburbs of Harris County, with all the doors opened, 'you'd kill most of the voters in the district.'" J.A. 298, 302 (statement of former State Senator Mauzy).

[7]Regular shapes and respect for political subdivisions have a weak history, at best, as districting goals in Texas. *See* TX J.S. 15a n.9. Although the court below thought that prior plans were more compact than the 1991 plan, the Legislature in prior years undisputably lacked the technological capacity needed to draw districts as precisely as those adopted in 1991. Many legislators stated without contradiction that compactness has never been a strong State interest in Congressional districting. *E.g.* J.A. 391 (former State Senator Lyon); *id.* at 303 (former State Senator Mauzy).

> *For the sake of maintaining or winning seats* in the House of Representatives, Congressmen or would be Congressmen shed hostile groups and potential opponents. . . . The Legislature obligingly carved out districts of apparent supporters of incumbents, as suggested by the incumbents, and then added appendages to connect their residences to those districts.

Id. at 55a-56a (emphasis added) (footnotes and citations omitted). In addition, a substantial part of the districts' irregularity was caused by the goal of putting incumbents' residences into their districts and not pairing incumbents in the same district. "[I]ncumbent residences repeatedly fall just along district lines." *Id.* at 24a.[8]

Significantly, incumbent protection was an overriding factor in shaping majority-white as well as minority opportunity districts. Many Texas Congressional districts were "disfigured less to favor or disadvantage one race or ethnic group than to promote the reelection of incumbents." *Id.* at 9a (footnote omitted).[9]

2. *Potential liability under the Voting Rights Act.*

The Legislature was aware as it redistricted of its vulnerability under § 2 of the Voting Rights Act if it fragmented an African-American or Hispanic population concentration that was "sufficiently large and geographically compact"[10] to constitute an effective majority in a single-member district. It was well known that two such large and

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[8] *See* TX J.S. 24a-25a (describing a half dozen such instances).

[9] *See* Addendum to this Brief (maps showing highly irregular shape of interwoven, majority-white Districts 6 (including parts of five counties) and 12, in comparison to invalidated District 30 (entirely within Dallas metroplex)).

[10] *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986).

geographically compact African-American populations existed, in Harris County (Houston) and in Dallas County, and that a sufficiently large and compact Hispanic population existed in Houston. The fact that a compact, majority-black district could be drawn in the Dallas area had been well publicized at least since the early 1980's, when the African-American community was deliberately divided between District 5 and District 24. Plaintiffs' main lay witness, Kent Grusendorf,[11] a Republican member of the House of Representatives, testified at trial that a compact, viable African-American district was "absolutely" possible in Dallas and that fairness required it. TR I:99-101.[12]

In Harris County, District 18 had been represented by an African American since the election of Barbara Jordan. The Hispanic population had experienced phenomenal growth and was sufficient to constitute the majority in *two* Congressional districts. TX J.S. 13a. A highly-publicized plan creating a new majority-Hispanic district, while maintaining the opportunity of African Americans to elect their candidate of choice in District 18, was proposed by State Representative Roman Martinez at the outset of the redistricting process.[13]

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[11] Plaintiffs presented only two non-plaintiff witnesses at trial, Rep. Grusendorf and their expert, Dr. Weber.

[12] Plaintiffs' expert, Dr. Weber, testified that the Owens-Pate plan for Dallas included a 45.6% African-American population district, J.A. 143, which was "reasonably compact" and would give African Americans an opportunity to elect a candidate of their choice in Dallas. TR III:115. *See also* TR II:30-31, 127-131 (testimony of Dr. Weber).

[13] TX J.S. 36a-37a. Rep. Martinez' plan did not split any precincts, TX J.S. 39a, and it maintained the Democratic nature of District 25, thus protecting white incumbent Mike Andrews, *id.* at 36a-37a. His plan could have been even more compact if District 25 had not been drawn to protect for incumbency. *E.g.* TR IV:41 (Democrats, including Hispanics, were removed to District 25). The highly compact Owens-

State Exhibit 12, produced by Christopher Sharman, the Legislature's chief technician and map drawer, TX J.S. 26a, confirms what was obvious to the Legislature. Taking no political, incumbency, geographic or factors other than race and district shape into account, Mr. Sharman produced an extremely compact version of District 18 that closely parallels the population and African-American percentage of existing District 18. Mr. Sharman testified that without political and other influences, creation of a compact version of District 18 was "fairly easy." TR IV:68. Similarly, Mr. Sharman was able, when excluding incumbency and other factors, to produce compact districts with minority population comparable to that of the current Districts 29 and 30. *Id.* at 68-69; TX Ex. 12.

3. *State legislators' ambitions.*

Closely related to incumbent protection is Texas' tradition of tailoring new or vacant districts to be favorable to aspiring members of the State Senate and House of Representatives.[14] In the 1991 plan, state legislators so assisted included white Senator Green, African-American

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Pate plan, *see* TX J.S. 49a, created districts with 53% African-American population (Dist. 18) and a 52.9% Hispanic population (Dist. 28) in Houston. J.A. 142. *See also* U.S. Ex. 1086, tape 2, at 19-20 (Texas Republican Party's studies indicated that a Hispanic opportunity district "not a dragon or a dinosaur district with unreasonable contortions" could "be created to serve a real community of interest . . . along with an expanded existing Black Congressional district"). Dr. Weber testified that a "reasonably compact" district with an African-American voting-age majority was possible in the Harris County area in 1991. TR III:113.

[14]*See* TX Ex. 62 (chart listing examples). This tradition goes back at least to 1971, when Congressional districts were drawn to promote the election of then-Senators Charles Wilson and Barbara Jordan. U.S. Ex. 1071, at 10 (Decl. of Dr. J. Morgan Kousser). *See also* J.A. 394 (Edward Martin).

Senator Johnson, Hispanic Senator Tejeda, and Hispanic Representative Martinez.

4. *Other factors.*

Several other traditional factors affected district lines and produced irregularities. The State achieved absolute population equality, with each district having 566,217 residents, a feat that caused considerable irregularity. Requests from communities to be in a particular district were accommodated where possible. The placement of industry, universities,[15] airports, government installations and other economic criteria was given great weight.[16]

B. The Interplay of These Factors

District 30. In Dallas, State Senator Eddie Bernice Johnson intended to run for Congress from the new district. She represented a compact, politically cohesive district in the State Senate that was majority-minority. Senator Johnson early in the process proposed creating a new district in

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[15]*E.g.*, TR III: 182-183 (universities and factories).

[16]For example, the State intentionally placed NASA into three different districts to enhance representation of this important state interest. J.A. 249-50. *See also id.* at 249 (District 29 deliberately includes major industries along Houston Ship Channel), 300 (location of industries considered in 1967 redistricting). Other non-racial influences include the tradition that Democrats would not seek affirmatively to interfere with existing Republican seats; the desire of Democrats to retain seats currently held by Democrats; the reluctance to redraw lines in a manner that placed two incumbents in the same district; locations of friends, supporters and family members of incumbents and aspirants; and non-racial, idiosyncratic factors.

Dallas that overlapped substantially with her Senate district, was compact, and did not split any precincts. However, as found by the district court, her proposal "drew much opposition from incumbents and was quickly abandoned." TX J.S. 31a. *See also id.* at 49a.

The irregular contours of District 30 resulted from accommodating the demands of incumbents Martin Frost and John Bryant (both white) as well as other non-racial interests. The western, irregular border of District 30 goes out to Grand Prairie because Senator Johnson had relatives[17] in the City, as well as a political base that was predominantly white. Congressman Frost also had strong political ties to Grand Prairie and after a fierce battle, they split the City in a compromise. *See, e.g.*, TX J.S. 32a. The portion of that City in District 30 is only 14.7% African American. PX 34T. Also to the west, one large arm goes out to Dallas-Fort Worth Airport, which all agreed was included for strictly non-racial reasons.[18] Irregularities in Oak Cliff and in the eastern boundary resulted from compromises with incumbents Frost and Bryant. TX J.S. 32a.

After Frost and Bryant won back territory on the east and west of District 30, the District was forced further north, because of the traditional one-person, one-vote requirement of population equality among districts. But just north of the predominantly African-American neighborhoods of South Dallas are the affluent, highly Republican, Park Cities neighborhoods, which both the incumbent and the residents wanted to remain in Republican District 3. E.B. Johnson

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[17]Plaintiffs' expert testified that including the relatives of an African-American incumbent is not a racial gerrymander, even if the relatives also are black. TR III:120.

[18]*See, e.g.* TR II:223-24, III:116 (Plaintiffs' expert concedes that extension of District 30 to airport "didn't have anything to do with race").

Dep. 130; U.S. Ex. 1038. District 30 accordingly was configured around Park Cities (creating a huge incursion by District 3 into the middle of District 30),[19] and picked up a large number of white residents,[20] including a Jewish community that was unhappy in District 3,[21] two small African-American communities, in Hamilton Park and Plano, which shared many ties with South Dallas and whose residents requested to be in District 30, and northern corridor industry such as Texas Instruments to add to the District's economic stature.

Districts 18 and 29. The court below found that factors other than race and ethnicity "influenced the boundary drawing of the Harris County districts." TX J.S. 38a.[22] The court noted that District 25, represented by white incumbent Mike Andrews, "was to be kept intact and Democratic," *id.* at 38a. A suggestion by Congressman Craig Washington that District 18 be reconfigured based on the shape of his former State legislative district "was unacceptable 'because it would have taken a large chunk out of District 25,'" *id.*

Another non-racial factor "was the desire of Senator

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[19] *See* Addendum to the Brief (map); J.A. 406 (map).

[20] The northern segment of District 30 is 24% African-American. *See* J.A. 335 (weighted average for segments 3 and 4).

[21] Lawson Ex. 22 ¶ 3; Lawson Ex. 25 ¶¶ 6-7.

[22] The district court cited the testimony of Dr. Richard Murray, a local political scientist, that "various factors influenced the Legislature in designing Districts 18 and 29: a clear commitment to improve the representational opportunities for Hispanics; the personal ambitions of certain members of the Harris County delegation; protection of incumbents; party politics; class interests; preservation of the 18th as an African-American majority seat; and keeping certain neighborhoods together." TX J.S. 47a.

Gene Green[23] to draw a Congressional district in which he could run, namely one which included as much of his Senate district as possible," *id.* State Representative Roman Martinez, who aspired to run for Congress from the same area, proposed a compact plan in which a new majority-Hispanic district would overlap substantially with his House District. *Id.* at 36a-37a. This plan was rejected because it did not do enough to accommodate Senator Green's interests. The court below found that "the borders of District 29 became increasingly distended as [Rep. Martinez] and Senator Green fought to place their state constituents within the new district." *Id.* at 66a; *see also id.* at 38a-39a.

It bears repeating that if population was taken out of a proposed district to protect incumbents, or for other non-racial reasons, new population had to be found to meet population equality requirements; it is obvious that incumbents and aspiring state legislators would want those new voters to have characteristics as similar as possible to those of the voters taken out of the district as initially proposed.

C. The Character of the Resulting Districts

Although the shape of Congressional Districts 18, 29 and 30 is more irregular than alternatives earlier suggested by minority legislators, the areas and voters included within each of the districts as finally configured share significant economic, social and political interests. To begin with, each district is located within a single metropolitan area.

The core residential areas that comprise District 18, in Houston, have remained unchanged since Barbara Jordan was elected in 1971. Lawson Ex. 16 ¶ 7. In shaping the district after the 1990 census, the Legislature added

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[23]Senator, now Congressman, Green is white; Rep. Martinez is Hispanic.

communities to which the children of existing residents of the core areas had migrated. J.A. 261 (testimony of Paul Colbert). Residents of the migration areas have ties, such as church membership and Sunday worship, with the downtown neighborhoods, and all residents in current District 18 are "part of the same media markets, including media directed toward African Americans." Lawson Ex. 13 ¶ 17 (statement of Councilwoman Sheila Jackson Lee); *see also* Lawson Ex. 12 ¶ 9 (statement of Rev. William Lawson). Non-minority neighborhoods traditionally in the District, such as Montrose, which indicated a desire to remain in it, were retained. *See* J.A. 397.

Local institutions affect the elected leaders' ties to the people and communities in District 18. For example, one witness noted: "Texas Southern University (TSU), a historically majority-black university with a substantial white student population, is located in District 18. Our Congressman, Craig Washington, our State Representative, Al Edwards, and our City Councilman, Al Calloway, all went to TSU. The late Congressman Mickey Leland also went to TSU." Lawson Ex. 18 ¶ 8 (statement of Deloyd T. Parker). Congressional nominee Sheila Jackson Lee[24] explained that because District 18 is wholly within Harris County, "[t]hese areas share the same City and County representatives" and "[i]f a District 18 constituent were to bring a local problem to my attention -- whether that individual is black, white, Hispanic, or Asian; whether that individual lives in the north, south, east or west of the district -- I would know which local representative could best address that problem, so that the representative and I could coordinate our efforts to work together on the issue." Lawson Ex. 13 ¶ 10.

Similarly, the residents of District 29 in Houston have common demographic and economic characteristics. Because

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[24]At the time of trial, Councilmember Lee was the Democratic nominee in District 18.

it is the least wealthy of Texas' Congressional districts, "there is definitely a community of interest." J.A. 477 (Martinez Dep.). The same Spanish language media serves the community throughout District 29. J.A. 396 ¶ 14. Both Districts 18 and 29 provide for ease of transportation and communication among their residents, as Dr. Paul Geisel, an expert demographer, testified: "Both of these districts are . . . historic political wards of [Houston]. . . . [D]istricts 18 and 29 are small as congressional districts. It is possible to visit all parts of either district in any direction in less than 1 hour." J.A. 289. Dr. Richard Murray, a well-respected, local political scientist, reported about Districts 18 and 29: "Stable neighborhoods and communities of interest were generally respected. . . . Stable innercity neighborhoods -- River Oaks, south Montrose, the East End, Third Ward, Acres Home -- were not divided." Lawson Ex. 26, at 17.[25]

The same characteristics are found in District 30 in Dallas County. Other Texas Congressional districts that include part of the Dallas metroplex also spread to rural counties. District 30, however, is located totally within the metropolitan area. Congresswoman Johnson testified about the small African-American neighborhoods[26] at the northern

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[25]Plaintiffs' only expert witness testified: "I know Professor Murray very well, and I respect him." TR V:75. Dr. Murray found:

> The congressional district plan adopted by the Texas Legislature created districts in Harris County [that] bring together people, including minorities not well represented in the legislative chambers even in the 1990's, who share a number of demographic and political behavioral characteristics."

Lawson Ex. 26, at 25. *See also* J.A. 395-96 ¶¶ 11-12; Lawson Ex. 18 ¶ 8.

[26]Hamilton Park is the first subdivision that would sell lots to African Americans on which to build new houses. Middle-income and upper-income African Americans migrated from South Dallas first to Hamilton Park, then to the McShan Road area and up the northern corridor to Plano. Johnson Dep. 132-133.

end of District 30: "In terms of a community interest . . . many of them are dentists and physicians who practice, have offices in [South Dallas]. They go to church in that area. They participate in social groups in the area. I live in Southwest Dallas County and many of them are my personal friends and social associates." Johnson Dep. 134. Residents of both the northern and the southern parts of District 30 are members and active supporters of local organizations such as the NAACP and Urban League. *Id.* at 142. Indeed, both African-American and white communities in North Dallas were included within District 30 because they did not feel adequately represented in their prior, predominantly Republican, Congressional districts. Johnson Dep. 132-133, 135; Lawson Ex. 22 ¶ 3; Lawson Ex. 25 ¶¶ 6-7.

As with District 18 in Houston, migration patterns were considered in determining areas to be included within District 30. TX J.S. 28a-29a (citing PX 8B (transcript in *Terrazas v. Slagle*)). In addition, communities of interests reflected by support for regional, mass transportation were considered. District 30 was designed in part based upon voting pattern data from the local referenda on Dallas Area Rapid Transit (DART) "to determine where there might be more communities of interest, where there would be support that would go beyond the color of the candidate." TX J.S. 34a (quoting Johnson Dep. 144). The DART light rail system is not regularly shaped, yet, as explained by DART Board member and former Texas House member Jesse Oliver, "the DART light rail system appears to be the skeleton of District 30 [and] DART bus routes appear to be the veins and arteries of District 30." J.A. 402; *see* J.A. 406-07 (DART maps).[27]

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[27]As Mr. Oliver stated: "The close relationship between District 30 and the DART service area is a logical one. The light rail starter system was designed to serve transit-dependent people; and those people are usually low to moderate income workers, who most often are minorities. District 30 includes this same community of people." J.A. 402 ¶ 11.

D. Representation of District Constituencies

The court below made no finding that the configuration of any of the three invalidated Congressional districts had affected the adequacy of representation afforded constituents, much less that there were any such effects along racial lines. The evidence was to the contrary.

For example, white plaintiff Barbara Thomas was "very, very favorably impressed" with nominee Sheila Jackson Lee and expected that as a Congresswoman, Lee will reach out to white voters and attempt to build racial bridges. Thomas Dep. 74, 78. One white resident of District 18 described the responsiveness of Congressman Mickey Leland and nominee Sheila Jackson Lee to *all* district residents. He testified that whites in the district "feel comfortable with that representation" and that there is widespread white support for majority-minority districts such as District 18.[28] Two white District 30 residents described how their former representatives had ignored them and how their representation has improved since they had been placed in District 30.[29]

Witnesses emphasized that these districts were not segregated,[30] but instead helped to overcome the effects of

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[28]Lawson Ex. 10 ¶ 9 (statement of David Jones). Mr. Jones referred to a recent survey conducted by Texas A&M University indicating that six of ten whites supported majority-minority districts and only 23 percent of whites were opposed. *Id.* ¶ 10.

[29]Lawson Ex. 22 ¶ 3 (statement of Marc Stanley); Lawson Ex. 25 ¶¶ 6-7 (statement of Judith E. Zimmerman). *See also* Lawson Ex. 21 ¶ 10(statement of Grady W. Smithey, Jr.).

[30]"Segregation" is an inappropriate description of the majority-minority Districts at issue here. In *Gomillion v. Lightfoot*, 364 U.S. 339 (1960), the word "segregate" was used to describe allegations that "[t]he essential inevitable effect of this redefinition of Tuskegee's boundaries is to remove from the city all save only four or five of its 400 voters, while

segregation.[31] The only plaintiff from District 30, Pauline

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not removing a single white voter or resident. The result of the Act is to deprive the Negro petitioners discriminatorily of the benefits of residence in Tuskegee, including *inter alia*, the right to vote in municipal elections." Justice Frankfurter, known for his precision in the use of language, said that if those allegations remained uncontradicted or unqualified after trial, "the conclusion would be irresistible . . . that the legislation is solely concerned with *segregating* . . . voters," *id.* at 341 (emphasis added).

Here, in contrast, District 18, 29 and 30 are the most integrated districts in Texas' 1991 districting plan, with all of the State's other 27 districts having a higher percentage of a single race or ethnic group than any of these three districts. In voting age population, District 18 is 47.1% black, 35.2% white and 13.7% Hispanic; District 29 is 55.4% Hispanic, 9.8% black and 33.4% white; District 30 is 47.1% black, 36.1% white and 15.1% Hispanic. As the results in District 29 indicate, there is no bar to white candidates running or being elected. Texas has seven Congressional districts that are more than 80% white. It is not accurate to describe an integrated, minority opportunity district as "segregated," especially when heavily white districts are not labelled that way.

The court below also used the term "segregate" in an unusual sense, to refer both to including minority voters into *integrated* minority opportunity districts *and* to the placement of other minority voters *into majority-white districts*. *E.g.* TX J.S. 68a. Plaintiffs' expert was similarly expansive in his definition of segregation. Dr. Weber first stated that District 30 was not "a strong indication of segregation," because many African Americans in the close vicinity were excluded. TR III:110. He later changed his testimony and said that District 30 was segregated, but he was unable to say whether blacks were segregated *into* (or out of) the District and he testified that whites were segregated *into* the District. TR III:139.

[31]White resident Judith Zimmerman explained: "Far from segregating voters, the creation of a majority-minority district in Dallas has provided an opportunity for a long overdue joining of historically divided forces. Dallas is extremely polarized along racial lines, and this district is a wonderful tool to help us pull together." Lawson Ex. 25 ¶ 7. Dallas businessman Albert Black stated: "I grew up in a segregated neighborhood. . . . I do not understand how anyone could think a district that brings together an African-American businessman from South Dallas

Orcutt, described the district forcefully: "*It is integrated. Of course it is, and you know it.*" Orcutt Dep. 110-11 (emphasis added)."

Plaintiffs' Claims

The nature of the claims asserted by plaintiffs in this case are fundamentally different from other post-*Shaw v. Reno* lawsuits, such as those involving Georgia and Louisiana. Plaintiffs in this case do not seek a remedy that will make these three majority-minority districts majority white. Plaintiffs here do not contend that majority-non-white districts would not exist in Dallas or Harris County except as a result of race-conscious redistricting. To the contrary, plaintiffs readily conceded that what they regard as "color-blind" redistricting would result in African-American opportunity districts in both counties, and in a predominantly Hispanic district in Harris County. Plaintiffs' central trial court exhibit was their alternative districting plan, deliberately drawn by plaintiffs' expert without consideration of race. Even under such a plan, plaintiffs acknowledged that Districts 18, 29 and 30 would be majority-non-white. This case thus presents the circumstance described in *Shaw*, 113 S. Ct. at 2828, in which recognition of existing communities would result in non-white districts.

The gravamen of plaintiffs' claim concerns not *whether* Districts 18, 29 and 30 should be majority-non-white, but only what the particular contours of these districts should be. Plaintiffs contend that under a race-neutral districting process, the minority population should actually have been higher in District 18 and about the same in District 30. Only in District 29, which is currently represented by a white incumbent, do plaintiffs advocate a

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(like me) and an Anglo businessman from North Dallas (like Jerry Johnson) to further economic development in the entire Dallas area could be considered segregative." Lawson Ex. 1, at 16.

substantial increase in the proportion of whites.[32]

The District Court's Ruling

The court below invalidated Districts 18, 29 and 30, while upholding the constitutionality of 18 majority-white and three majority-Hispanic districts.[33] It subjected Districts 18, 29 and 30 to "strict scrutiny" because it said that they were "racial gerrymander[s]," TX J.S. 69a, defined as districts intentionally created to be majority-minority, which did not comport with "traditional" districting criteria, which the court held must be "objective" and "ideal." *Id.* The court specifically excluded protection of incumbents from among "traditional districting" factors, because it is not an

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[32]Plaintiffs advocated combined-minority districts, proposing to put more Hispanics into the African-American opportunity districts, and more African-Americans into the Hispanic districts, a legal argument discussed in note 80, below. The following chart shows the white and minority population of Districts 18, 29 and 30 in the current plan and in plaintiffs' proposed alternative plan:

	Black and Hispanic	White
District 18		
Current Plan	370,913 (65.5%)	177,036 (31.3%)
Plaintiffs' Plan	411,915 (72.7%)	142,668 (25.2%)
District 29		
State's Plan	397,459 (70.2%)	157,461 (31.4%)
Plaintiffs' Plan	311,096 (54.9%)	233,660 (41.3%)
District 30		
State's Plan	375,233 (66.3%)	177,661 (31.4%)
Plaintiffs' Plan	364,467 (64.4%)	191,519 (33.8%)

The net overall effect of plaintiffs' plan for these three districts of more than 1.5 million residents is to increase white population by 55,689, mostly in District 29, which so far has elected the candidate of choice of white, and not Hispanic, voters, TR II:18, J.A. 181 ¶ 38.

[33]Plaintiffs dropped their challenge to the remaining six districts, including three majority-Hispanic districts.

"ideal" criterion, *id.* at 56a & n.43, and because "many of the voters being fought over [by the incumbents] were African American," *id.* at 64a.

Applying strict scrutiny, the court did not address whether Texas had a compelling justification for creating minority opportunity districts in the Houston and Dallas areas because it concluded that the districts were not "narrowly tailored." *Id.* at 69a-74a. The court held that in creating majority-minority districts, the State must maximize regularity of district shape,[34] even though no such rule exists for majority-white districts. The court found "dispositive" the "fact that alternative plans for Districts 18, 29 and 30 were all much more geographically and otherwise logical," *id.* at 73a.

SUMMARY OF ARGUMENT

Shaw v. Reno, 113 S. Ct. 2816 (1993), and *Miller v. Johnson*, 115 S. Ct. 2475 (1995), hold that when "race predominates in the redistricting process," *id.* at 2488, a plaintiff who has standing may require a State to justify its districting plan by demonstrating that there was a compelling State interest for taking race into account and that the plan was narrowly tailored to achieve the compelling goal. On the other hand, these cases reaffirm that, absent proof that racial considerations predominated the districting process, there is no colorable claim of a Fourteenth Amendment violation even though a particular electoral district has a majority-minority population. *See Miller*, 115 S. Ct. at 2490.

The factual findings below -- if not the lower court's

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[34]"Because a *Shaw* claim embraces the district's appearance as well as its racial construction, narrow tailoring must take both these elements into account. That is, to be narrowly tailored, *a district must have the least possible amount of irregularity in shape*, making allowances for traditional districting criteria." TX J.S. 72a (footnote omitted and emphasis added).

sweeping characterizations of the case -- and abundant evidence in the record demonstrate that race was *not* "the predominant factor motivating the legislature's decision to place a significant number of voters within or without" Districts 18, 29 and 30. *Miller*, 115 S. Ct. at 2481. Differences between the districts as enacted and those which plaintiffs conceded would be appropriate, *see* TX J.S. 48a, were attributable to reasons that have nothing to do with racial motive. Because this case involves the interplay of numerous *political* factors (primarily Texas' tradition of partisanship and incumbent protection) in the districting process, and the Legislature's simultaneous awareness of the State's racial demography, of its obligations under § 5 of the Voting Rights Act, and of the need to avoid fragmentation of concentrations of minority voters that would subject it to potential liability under § 2 of the Act, the court below erred in subjecting the challenged districts to "strict scrutiny" as though race predominated.

The Court below also erred in its belief that the only redistricting principles which could be considered were those listed in *Shaw*, 113 S. Ct. at 2827. It specifically rejected incumbent protection, TX J.S. 56a, as a traditional redistricting criterion as well as other non-racial considerations that actually influenced the 1991 Texas redistricting. Moreover, the three districts invalidated below have contiguity in the same way as other challenged districts found legal by the trial court, and they likewise reflect as much respect for political subdivisions as those other districts.

Even if the Court were to determine that "strict scrutiny" is the appropriate analytic standard, the judgment below must still be reversed. The State had an extremely strong basis in evidence for concluding that a compelling interest supported the creation of these minority opportunity districts in light of the population concentrations, polarized voting, the history of discrimination and, with respect to

District 18, the requirement of non-retrogression. The court below erred in holding that a majority-minority district "must have the least possible amount of irregularity of shape, making allowances for traditional districting criteria," TX J.S. 72a, which did not include incumbency protection. This is a clear misreading of this Court's language in *Shaw* stating that there would be a violation of the Fourteenth Amendment if "a state concentrated dispersed minority population in a single district by disregarding traditional principles such as compactness, contiguity, and respect for political subdivisions," 113 S. Ct. at 2827. There is nothing in the *Shaw* opinion which says or indicates that the three principles mentioned are exclusive. And the fact that "*Shaw* nowhere refers to incumbent protection as a traditional districting criterion," TX J.S. 56a, does not mean that a court in a democratic society can shut its eyes to such political reality.

Plaintiffs' complaint should have been dismissed because they failed to introduce evidence sufficient to demonstrate their standing.[35] Although they are residents of Districts 18, 29 and 30, none of the plaintiffs presented evidence that they suffered the harms discussed in *Shaw*, 113 S. Ct. at 2826.

ARGUMENT

I. *THE 1991 PLAN, INCLUDING DISTRICTS 18, 29 AND 30, SHOULD HAVE BEEN SUSTAINED WITHOUT STRICT SCRUTINY*

This is not a case like *Miller v. Johnson*, in which a legislature enacted several redistricting plans based on multiple criteria -- each of which was criticized for not including enough minority districts -- and thereafter adopted a plan in which all factors "that could realistically be

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[35] *See United States v. Hays*, 115 S. Ct. 2431, 2435 (1995)(dismissal proper if evidence sufficient to support standing not adduced at trial).

subordinated to racial tinkering in fact suffered that fate," 115 S. Ct. at 2475. Here, the Legislature started with an undisputed awareness of plans that would produce compact, contiguous, minority-opportunity Congressional districts in urban areas where large concentrations of minority voters resided. The legislature ultimately adopted a plan that included minority opportunity districts in those metropolitan areas, but the districts' shape -- while remaining contiguous, having as much respect for political subdivisions as other districts created under the plan, and including equal population -- became somewhat less regular and compact solely as a result of complex political compromising designed to protect incumbents, achieve partisan advantage and accomplish other non-racial goals.

Because of this very different fact pattern, the prerequisite determination requiring the application of "strict scrutiny" announced in *Miller*: that "race predominate[d] in the redistricting process," 115 S. Ct. at 2488, could not be justifiably made in this case; and for this reason, the court below should have sustained the legislative districts without undertaking a "strict scrutiny" analysis.

A. Race Did Not Predominate Either In The State Of Texas' Decision To Create Majority-Minority Districts Or In The Ultimate Configuration Of Those Districts.

Miller held that the *predominance of race* in the districting process, not district shape, is the touchstone for application of "strict scrutiny." 115 S. Ct. at 2490.

> To make this showing ["that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district"], a plaintiff must prove that the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity,

> respect for political subdivisions or communities defined by actual shared interests, to racial considerations.

115 S. Ct. at 2481. The Court also recognized: "[A] State is free to recognize communities that have a particular racial makeup, provided its action is directed toward some common thread of relevant interests. '[W]hen members of a racial group live together in one community, a reapportionment plan that concentrates members of the group in one district and excludes them from others may reflect wholly legitimate purposes.'" *Id.* at 2490 (quoting *Shaw*, 113 S. Ct. 2816, 2826).[36]

Further insight into the applicable standards is provided by the Court's action on the same day that *Miller* was announced, summarily affirming the lower federal court ruling that upheld California's Congressional and State legislative districting plans, *DeWitt v. Wilson*, 115 S. Ct. 2637 (1995). The creation of majority-minority districts was a strong motivating factor in the *DeWitt* districting plan, which was proposed by a panel of Masters and adopted by the California Supreme Court. *See Wilson v. Eu*, 4 Cal. Rptr. 2d 379 (1992).[37] As found by the Supreme Court of California,

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[36]*Miller* directed courts "to exercise extraordinary caution" and recognized "the intrusive potential of judicial intervention into the legislative realm." 115 S. Ct. at 2488. Even to invoke strict scrutiny, plaintiffs must show that race "predominated" in the districting process and other considerations were "subordinated," *id.* at 2488. Justice O'Connor's concurring opinion explained: "[t]he threshold standard the Court adopts . . . [is] a demanding one" and "[a]pplication of the Court's standard does not throw into doubt the vast majority of the Nation's 435 Congressional districts," *id.* at 2497.

[37]The Masters "devoted intense efforts to comply with the federal Voting Rights Act." 4 Cal. Rptr. 2d at 383. They explicitly gave "federal Voting Rights Act requirements . . . the highest possible consideration," *id.* at 397. Because the Masters had no knowledge of whether the second and third preconditions of *Thornburg v. Gingles*, 478 U.S. at 50

the Masters engaged in "successful efforts to *maximize* the actual and potential voting strength of all geographically compact minority groups of significant voting age population," *id.* at 393 (emphasis added). Despite the Masters' deliberate creation of minority opportunity districts in all areas of the State where the minority population was sufficiently large and geographically compact to constitute a majority in a single-member district, the three-judge court found that strict scrutiny was not required because "the Masters' Report sought to balance the many traditional redistricting principles, *including the requirements of the Voting Rights Act*," 856 F. Supp. 1409, 1413 (E.D. Calif. 1992) (emphasis added).[38]

When these principles are applied to the facts found by the district court, it is clear that race was not "the predominant" motive within the meaning of *Miller* and, hence, that strict scrutiny of the Texas districting plan was not required. Like the Masters in *DeWitt*, Texas created majority-Hispanic or majority-African-American districts *only* where either the Hispanic or African-American population was sufficiently large and compact to satisfy the first

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(1986), were satisfied in any regions of California, they chose to minimize the risk of a successful § 2 claim by creating a majority-minority districts wherever the first *Gingles* prong was met. 4 Cal. Rptr. 2d 379, 383, 397, 399 (Masters did not have evidence of voting patterns and thus chose to "draw boundaries that will withstand section 2 challenges under any foreseeable combination of factual circumstances and legal rulings."). Indeed, the Masters went further and where a compact minority population was not large enough to constitute a majority in a district, the panel nonetheless kept the minority population together in an effort to promote minority influence. *Id.* at 383-384.

[38]Although the court alternatively found that the plan would survive strict scrutiny, 856 F. Supp. at 1414, there was no evidence of racially polarized voting, thus suggesting that this Court's summary affirmance was based on the conclusion that strict scrutiny was not required.

precondition of *Gingles*.[39] The Legislature decided to make Districts 18, 29 and 30 majority-minority only after it was clear that such majority-minority districts could be created *in conformity with compactness and other "ideal" criteria*. Compactness was not subordinated to race or ethnicity in determining the number of majority-minority districts. The State did not maximize the number of majority-minority districts.[40] In fact, it instead rejected proposals that would have created additional minority opportunity districts.[41]

The Masters in *DeWitt* identified reasonably compact majority-minority districts and then built the rest of the State's plan around those districts. If Texas had adopted the idealized, most compact versions of Districts 18, 29 and 30, strict scrutiny would not be triggered. Instead of rigidly adopting and building around the idealized versions, Texas in the final borders of its minority opportunity districts accommodated non-racial goals, such as incumbent protection, State legislator aspirations, placement of non-population areas like airports and industry, placement of incumbents' residents, funding sources and friends, and requests from voters of all race and ethnic groups and

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[39]478 U.S. at 50. The Legislature was thoroughly advised about the standards applied under § 2 of the Voting Rights Act through the "gray books" prepared by and presentations given by knowledgeable Texas Legislative Counsel attorneys. *See* TX J.S. 17a.

[40]*E.g.*, TR III:21 (plaintiffs' expert, Dr. Weber, testified: "Texas 1991 redistricting plan is not designed to maximize black voting strength").

[41]The decisive role of compactness in the decisions when to create majority-minority districts and the absence of a "race for its own sake" motive is demonstrated by the State's rejection of proposals for additional majority-minority districts. The Legislature rejected proposals for majority-minority districts that would have joined together dispersed minority populations with no apparent communities of interest. For example, State Representative Jerald Larry proposed a third majority-African-American district that would have traversed parts of 15 counties. J.A. 305-06; Lawson Ex. 11 ¶ 6. *See also* J.A. 253, 397.

religions. Such accomodations are characteristic of the democratic society in which we live.

The evidence is overwhelming that the predominant, overriding *motive* in moving from regularly shaped to irregularly shaped versions of the opportunity districts was *not race, but incumbent protection*. As plaintiffs' main lay witness, Representative Grusendorf, conceded, "the odd configuration of District 30 was the result of protecting Frost and Bryant." TX J.S. 32a.

Adjusting the borders of a compact African-American or Hispanic district to better serve non-racial goals does not convert an appropriate and "wholly legitimate" consideration of race, *Miller*, 115 S. Ct. at 2490, 2500 (*quoting Shaw*, 113 S. Ct. at 2826), into "the predominant" use of race to determine the ultimate shape of the district. Rather than increasing the degree of racial motive, Texas' choice of irregular over regularly shaped versions of the minority opportunity districts decreased the role of race and ethnicity, by bringing additional influences into the decision.

B. Districts 18, 29 And 30 Encompass Communities That Have Actual Shared Interests

In describing the characteristics of districting plans that need not be tested under a strict scrutiny standard, the Court in *Miller* distinguished legislative recognition of "communities that have a particular racial makeup [as well as] . . . some common thread of relevant interests" from a legislative assumption that persons of the same race will prefer the same candidates at the polls, *id.* at 2490. The extensive record in this case amply demonstrates that Texas Districts 18, 29 and 30 all bring together "members of a racial group [who] live together in one community," *id.*, and who have deep, common bonds.

The extensive evidence of voting patterns presented by experts for both the plaintiffs and the State leaves no

doubt that the State was not relying on the unproven assumption of political cohesion among African Americans in Houston and Dallas and among Hispanics in Houston. The experts agreed and the evidence was overwhelming that African Americans in the Houston area *in fact* support the same political candidates, that African Americans in the Dallas area *in fact* vote cohesively as a group and that Hispanics in the Houston area *in fact* vote cohesively with each other, but not with African Americans. (This data is discussed in more detail in Point II. A.2.b., below.) Because, as described above (*see supra* pp. 11-14), these districts were designed to recognize known communities of common interests, and were not based on stereotypes, they are not subject to strict scrutiny.

C. The Final Configuration Of The Districts Resulted From A Constitutionally Permitted Political Gerrymander, Not From An Improper Racial Gerrymander

The essence of this case is political "gerrymandering," not racial "gerrymandering." The decision to protect all sitting incumbents and to make the three new districts Democratic had strong partisan implications. In a State where roughly half the votes go to Republicans, the 1991 districting plan designed 73% (22 of 30) of the Congressional districts to elect Democrats.[42] This feat

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[42]J.A. 346. *See also* U.S. Ex. 1000 (partisan index for Texas 1991 Congressional districts). The Democratic districts had majorities of Democratic voters of at least 54.8%, while the Republican districts had Republican majorities of at least 60.6%. *Id.* One of the districts (No. 23) drawn with a Democratic majority in 1991 elected a Republican in 1992, probably because the incumbent was under investigation and subsequently was indicted. The Republicans captured additional seats in 1994, but the 1994 losses were probably facilitated by the partisan gerrymander, *i.e.*, because the Legislature had spread Democratic voters thinly in the effort to maximize the number of Democratic-controlled districts, small shifts in voter choice toward the Republican direction

naturally required creative line drawing, but the effort was a far-flung search for Democrats, not minorities.

The fact that Texas had engaged in a political, and not racial, gerrymander was well known at the time. A *Bandemer*-type[43] lawsuit was filed by Republicans even before the final plan was adopted.[44] Republicans (except incumbents happy with their high Republican percentages) uniformly denounced the plan as Democratic gerrymandering.[45] No one claimed racial gerrymandering in favor of African-American or Hispanic voters. Instead, the opposite claim was made, that African-American and Hispanic voters were disadvantaged in the quest to protect all Democratic incumbents (most of whom happened to be white).[46]

The transformation of Rep. Grusendorf, plaintiffs' main trial witness, is illustrative. In 1991, Rep. Grusendorf found the district lines "very logical and rational, . . . dissecting communities very creatively in order to pack Republicans and maximize Democratic representation." He stated: "*This plan was drawn with only one thing in mind, and that is to protect Democratic incumbents, period.*" J.A. 376, 380 (Texas House Floor Debate, Aug. 21, 1991) (emphasis added). Only after claims of partisan gerrymandering lost in federal court[47] did Rep. Grusendorf

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resulted in the loss of seats.

[43]*Davis v. Bandemer*, 478 U.S. 109 (1986).

[44]*See Terrazas v. Slagle*, 821 F. Supp. 1162, 1172 (W.D. Tex. 1993).

[45]*E.g.*, J.A. 346, 351.

[46]TX J.S. 18a; U.S. Ex. 1005 (Republican claims of minority vote dilution).

[47]*Terrazas, supra note* 44.

discover the racial gerrymandering assertion, while still complaining more about the partisan nature of the plan.[48]

It is no mere coincidence that all plaintiffs in this case are Republicans.[49] Plaintiffs presented at trial a plan that kept the same number of majority-minority districts, but dramatically altered the Democrat-Republican balance, from 22/8 to 15/15. TR IV:175-177. Plaintiffs' expert admitted that plaintiffs' alternative plan sought "to provide a fairer distribution of the seats based upon what we know about *partisan* divisions in the State." TR V:24 (emphasis added).

With large, multi-ethnic, minority populations, it was inevitable that minority voters, like all other voters, would get caught up in the partisan engineering. The State's constitutionally legitimate effort not to fragment large, compact minority populations was carried out in the overarching context of its political gerrymander, with the result that the boundaries of both minority and non-minority districts, not only in Houston and Dallas, but throughout the State, were made more irregular.

The irregularity was exacerbated where the State was inserting new Democratic districts into metropolitan areas with a "shortfall" of Democratic voters.[50] But majority-minority districts were treated no differently than majority-white districts in the distortion of their shapes to produce Democratic majorities in all Democratic districts.

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[48]TR I:99 ("the problem in congressional districting was not in the Black district, but . . . the feeding frenzy of white Democrats"), 100-101 ("fairness" and Voting Rights Act "required majority-minority districts here"), 116 (Congressman Frost needed "Black voters to get re-elected" "[b]ecause they vote Democratic").

[49]*See* J.A. 390 ¶¶ 16, 17.

[50]*See* U.S. Ex. 1041 ("there just aren't alot of spare Democratic voters in and around Dallas").

Another way minority voters were caught up in the partisan gerrymandering is the happenstance that in Texas African-American, and to a lesser extent Hispanic, voters are Democrats. In the quest to find Democrats, African Americans and Hispanics were desirable, but so were white Democrats, as demonstrated by the intense fight between Eddie Bernice Johnson and Martin Frost over white voters in Grand Prairie. Such consciousness of race and ethnicity in the quest for Democrats is not constitutionally suspect, as discussed in Point D.2., below. Unless the Court concludes that *Davis v. Bandemer*,[51] should be overruled, a result that appellants do not advocate, there is no constitutional basis for new, anti-partisan gerrymandering rules, applicable *only* to majority-minority districts.

D. The Lower Court's Decision To Subject Districts 18, 29 And 30 To Strict Scrutiny Is Based On Serious Errors Of Law

1. *The District Court erred in rejecting incumbent protection as a "traditional" districting criterion.*

Miller and *DeWitt* establish that strict scrutiny applies only when race was "the predominant" motive for a districting plan and "race for its own sake . . . was the legislature's dominant and controlling rationale." 115 S. Ct. at 2488, 2486. It follows that where majority-minority districts can be created without displacing the State's other districting criteria, as in *DeWitt*, race is not "predominant." It also follows that where any conflicts between the goal of creating majority-minority districts and other districting

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[51] *See also Gaffney v. Cummings*, 412 U.S. 735, 752, n.18 (1973) (partisan gerrymandering does not constitute a Fourteenth Amendment violation, even when "the shapes of the districts would not have been so 'indecent' had the Board not attempted to 'wiggle and joggle' border lines to pockets of each party's strength").

objectives resulted in compromises, those other districting factors were not "subordinated," nor was race "the dominant and controlling" factor, *id.*

The centrality of incumbent protection, as described in the district court's opinion, makes clear that race and ethnicity could not have been, unless one misuses the adjective, the "predominant"[52] factor motivating the Legislature's 1991 action. The district court's opinion describes numerous instances in which the goal of creating majority-minority districts conflicted with the goal of incumbent protection, and the minority opportunity goal did not predominate.

For example, although the district court characterized Senator Johnson as motivated solely by a desire to create a majority-African-American district, the court recognized that the plan she initially proposed "drew much opposition from incumbents and was quickly abandoned." TX J.S. 31a n.22. Rather than constituting evidence that the Legislature's final plan for District 30 is an unconstitutional racial gerrymander, this finding is fatal to the claim that race and ethnicity predominated. In contrast to Senator Johnson's *proposal*, the *State's* plan came about only after intense political battles were fought, block by block, voter by voter, and the interests of minority voters were compromised to accommodate incumbent Congressmen.[53]

The district court did not deny that incumbent protection predominated, but instead reasoned: "*Shaw* nowhere refers to incumbent protection as a traditional districting criterion." TX J.S. 56a. Excising incumbent

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[52]The definition of predominant is: "holding an ascendancy" or "having superior strength, influence, authority or position." Webster's Third New International Dictionary 1786 (1981).

[53]*See* J.A. 388 (Senator Johnson had to accommodate incumbents to get plan passed by Legislature).

protection simply because it is not explicitly listed in *Shaw* is an error of law. *Miller* indicates that "traditional race-neutral districting principles . . . includ[e] *but [are] not limited to*" compactness and other factors on the illustrative list. 115 S. Ct. at 2488 (emphasis added). *Miller* explicitly held that where "these *or other race-neutral considerations*" are the basis for redistricting legislation and are not subordinated to race and ethnicity, strict scrutiny is not required. *Id.* (emphasis added). Thus, the district court misconstrued the law as expressed by this Court in *Shaw* and *Miller*.

There are sound policy reasons, among them federalism, for this Court's failure to include an exclusive list of non-racial districting criteria in its opinions. In *Miller*, the Court emphasized that the Constitution demands deference to a State's *own* definition of its districting interests.[54] The district court disregarded this Court's recognition of incumbent protection and political consequences as valid districting factors,[55] because it said that Texas was too

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[54]115 S. Ct. at 2487 (quoting *Chapman v. Meier*, 420 U.S. 1, 27 (1975))("Electoral districting is a most difficult subject for legislatures, and so the States must have discretion to exercise the political judgment necessary to balance competing interests"; "[f]ederal court review of districting legislation represents a serious intrusion on the most vital of local functions"; "reapportionment is primarily the duty and responsibility of the State").

[55]The Court has consistently emphasized that protection of incumbents is a legitimate State districting principle which, in the exercise of State discretion, may be given a higher priority than compactness. *White v. Weiser*, 412 U.S. 783, 791 (1973) (State could legitimately seek the benefits of "maintaining existing relationships between incumbent congressmen and their constituents" and preserving congressional seniority); *id.* at 794 n.15; *Karcher v. Daggett*, 462 U.S. 725 (1983)(avoidance of contests between congressional incumbents and "preserving the cores of prior districts" are legitimate State districting goals). The Court also has stressed: "Politics and political considerations are inseparable from districting and apportionment . . . The reality is that

aggressive in pursuit of these goals. TX J.S. 54a. But nothing in the Constitution or precedent suggests that a legitimate State goal is transformed into an illegitimate goal, simply because the State aggressively pursues it. Rather, the aggressiveness with which the State protected its incumbents merely reflects the high value Texas placed on this goal and the dominance of this influence in district construction.

The district court similarly concluded that only "objective districting factors" or "ideal districting criteria" may rebut a *Shaw v. Reno* claim. *Id.* at 53a, 56a. *Miller* indicates that this also was error because it would elevate a federal court's policy choices above a State's and is unrelated to the central inquiry into predominant legislative motive. The constitutional question is whether the State gave weight to its own self-defined interests and did not subordinate those interests to a racial motive.

2. *The district court erred as a matter of law in refusing to recognize the goal of incumbent protection as a non-racial influence on district shape.*

The second reason given by the court below for rejection of incumbent protection is that "racial gerrymandering was an essential part of incumbency protection," *id.* at 65a. The court reached this conclusion because "many of the voters being fought over were African American"[56] and some "African-American voters were deliberately fenced out of District 30 and placed in other

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districting inevitably has and is intended to have substantial political consequences." *Gaffney v. Cummings*, 412 U.S. at 753.

[56]The court's language necessarily recognizes that *many of the voters fought over were white* and others were Hispanic. The common characteristic of all these voters was not race, but Democratic party affiliation.

districts" to protect white incumbents. *Id.* at 65a, 66a.[57]

The district court's conclusion that incumbent protection was part of the "essence" of the racial gerrymander is based not on the placement of minority voters into majority-minority districts, but on the placement of minority voters into majority-white districts, an integrative, not segregative action. This conclusion is legal error because it improperly treats as racial *motive* mere race-consciousness and partisan *correlation* with race.

The court below recognized that white Democrats wanted minority voters not because of "race for its own sake," *Miller*, 115 S. Ct. at 2486, but because they voted Democratic. *See, e.g.*, TX J.S. 32a ("*Frost and Bryant were not concerned about the race of these voters.* They just wanted to hold onto enough Democrats to assure re-election.") (quoting testimony of Ted Lyon, former member of Texas House and Senate, J.A. 388).[58] Yet, ultimately the

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[57]The court made the same finding as to Harris County: "Incumbent Democrats were fencing minorities into their districts or into the new majority-minority districts, while those same minorities were effectively being removed from Republican incumbents' districts." *Id.* at 68a.

[58]The district court found "[q]uite telling" a letter from then-Senator Johnson to the Department of Justice, "explain[ing] why African-American voters were so attractive to incumbents fighting over district boundaries," TX J.S. 33a. The letter states:

> [A]pproximately 97% of the total votes cast by Blacks in the Dallas/Fort Worth metroplex area are cast in the Democratic primary. *Because of the consistency of this voting pattern*, Democratic incumbents generally seek to include as many Blacks as possible into their respective districts.

Id. (quoting PX 6E6) (emphasis added). Plaintiffs' main witness, Rep. Grusendorf, testified that the reason Frost wanted black voters in his district was *because* they vote Democratic. TR I:124 (emphasis added), and Dr. Weber testified that certain white Democrats desired African-American voters because "those would be reliable Democratic voters," TR III:125. Other legislative history confirms this partisan motive. Rep.

court rejected the State's argument that incumbent protection was a *partisan* matter, reasoning:

> As it happens, however, many of the voters being fought over were African-American. The State cannot have it both ways. It cannot say that African-American voters are African-American when they are moved into District 30, but they are merely "Democratic" when they are deliberately placed in a contiguous district for the purpose of bolstering the re-election chances of other Democrats.

TX J.S. 64a (footnote omitted).

Miller explicitly held that consciousness of the race of voters in constructing Congressional districts does not violate the Equal Protection Clause, explaining: "Redistricting legislatures will, for example, almost always be aware of racial demographics; but it does not follow that race predominates . . . . '[D]iscriminatory purpose'. . . implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part '*because of*,' not merely 'in spite of,' its [racial] effects." 115 S. Ct. at 2488 (emphasis added)(quoting *Personnel Administrator v. Feeney*, 442 U.S. 256, 279 (1979)). When stripped of rhetoric, the district court's view that race was an "essential part" of incumbent protection is revealed to be nothing more than incidental consciousness of the race and ethnicity of persons who vote for the Democratic party. Such incidental consciousness of race and ethnicity is not unconstitutional under *Miller* and therefore is not a reason for ignoring the race-neutral *goal* of incumbent protection as a predominant,

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Hill objected to the "snaking out" of District 30, noting that "certain black precincts that were contiguous to the central and core portion of the City of Dallas" were not included in District 30 but "[w]here they are included is in Democratic Congressman Martin Frost's district, and obviously they are there . . . *because those are democrat voters*." PX 24, 28-31 (emphasis added).

traditional, influence on the construction of Districts 18, 29 and 30. The *goal* of incumbent protection in Texas was race-neutral, applied to all incumbents and aspiring legislators, regardless of race and ethnicity. As such, it deserved recognition under *Miller* as a "traditional race-neutral districting principl[e]", 115 S. Ct. at 2481, that was not subordinated to race, and accordingly, Districts 18, 29 and 30 should not have been subjected to strict scrutiny.

3. *The district court applied the wrong test and erred in ignoring the irregular shapes of Texas' majority-white Congressional districts.*

The court below articulated its threshold test for strict scrutiny: "the plaintiffs' burden of production extends solely to the race-consciousness of the districts combined with the disregard of traditional districting criteria." TX J.S. 70a. It held that once plaintiffs meet that burden of producing evidence that would support a claim of racial gerrymander, the State's only defense is to meet the requirements of "strict scrutiny" (compelling State interest and narrow tailoring). *Id.* at 60a. Instead of carefully analyzing all of the motives and influences that resulted in Districts 18, 29 and 30, the arbitrary test adopted by the district court, and the erroneous limit on the non-racial districting criteria that the State may legitimately take into account, eviscerated the opportunity afforded the State by this Court's decision in *Miller* to defeat such a claim by showing that non-racial considerations were not "subordinated to race" in the districting process, 115 S. Ct. at 2481.

Under the district court's test, districts are subjected to strict scrutiny regardless of whether racial considerations predominated, if race played any role in creation of a majority-minority district and the shape of that district is irregular. The court explained its reasoning: "we disagree strongly that the misshapen boundaries of a racially

constructed district are merely prima facie evidence of a constitutional violation and not part of its essence." TX J.S. 53a n. 40.

Miller explicitly rejects this reasoning, holding that shape is *not* part of the "essence" of the Equal Protection claim. Instead, under *Miller*, a district's *shape*

> is relevant not because bizarreness is a necessary element of the constitutional wrong or a threshold requirement of proof, but because it may be persuasive circumstantial evidence that race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale in drawing its district lines.

115 S. Ct. at 2486. The court below erred in relying on shape as part of the "essence" of the claim.

The court also erred in ignoring the highly irregular shapes of majority-white Congressional districts in reaching its conclusion that Districts 18, 29 and 30 were "unexplainable in terms other than race," TX J.S. 65a, 69a. It focused its analysis upon only these minority opportunity districts despite its description of the overall 1991 plan as "a crazy-quilt of districts that more closely resembles a Modigliani painting than the work of public-spirited representatives," *id.* at 8a. Although plaintiffs challenged as "bizarre" 20 of the State's 30 districts,[59] the district court upheld the constitutionality of 18 majority-white districts and three majority-minority districts. It follows that when both majority-minority and majority-white districts across a State exhibit similar irregularity of configuration, shape provides

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[59]The lower court found many Texas majority-white districts "disfigured" and "equally 'untraditional'" as the districts it invalidated. TX J.S. 9a, 65a. The plaintiffs identified 23 of Texas' current Congressional districts as equally or more bizarre than Districts 18, 29 or 30. Thomas Dep. 49-52; Vera Dep. 36-44; Blum Dep. 65-73; Chen Dep. 65-77; Powers Dep. 55-58.

no probative indication of racial motive.

By ignoring the highly irregular, majority-white districts, the district court subjected efforts to recognize minority communities of interest to a higher constitutional standard than efforts to recognize other communities of interest. This is contrary to Justice O'Connor's conclusion, concurring in *Miller*, that "certainly the [appropriate constitutional] standard does not treat efforts to create majority-minority districts *less* favorably than similar efforts on behalf of other groups." 115 S. Ct. at 2497 (emphasis in original). Although Justice O'Connor's reference was to districts drawn to recognize ethnic communities of interest, it is equally applicable to Texas' efforts to recognize partisan communities of interest in constructing its districts. Redistricting always involves "competing claims of political, religious, ethnic, *racial*, occupational, and socioeconomic groups," *Bandemer*, 478 U.S. at 147 (O'Connor, J., concurring)(emphasis added), and the Fourteenth Amendment cannot possibly mean that African Americans and Hispanics seeking a district that recognizes their interests are held to a higher standard than white Democrats or Republicans.

4. *The district court erred in finding a "racial gerrymander" from a combination of awareness of racial demography, valid consideration of race in the districting process and the existence of correlations between districting factors and race.*

The district court's ultimate legal conclusion of racial gerrymandering is fatally flawed because it is based on racial correlations and awareness, not predominant motive. The court treated as improper: a legislature's awareness of racial demography (for example, because its redistricting software displayed such information); its legitimate consideration of race for valid reasons (such as the need to avoid retrogression and fragmentation); and the existence of a

correlation between race and a uniformly applied criterion in making districting decisions (such as partisan voting patterns or the racial makeup of a minority incumbent's or aspiring incumbent's supporters). The court incorrectly treated the plan that emerged from the interplay of these and other factors in the Legislature's deliberations as deliberate *racial gerrymandering*.

Without more, none of these phenomena individually or in combination establishes that the Legislature acted from predominant racial motives. Even if racial and ethnic considerations played a role in the decisions to create majority-minority districts in areas of the State where the *Gingles* prerequisites existed, they were not the "predominant" factors in the process. For, as discussed in Point I.A. above, determinations about the number and location of majority-minority districts incorporated consideration of compactness and similar districting principles, so that they do not reveal race to have been a dominant, overriding motive.[60] All of the other actions

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[60]Many of the facts cited by the lower court as indicative of a racial gerrymander are simply manifestations of the decision, made in the same manner as that in *DeWitt*, to create majority-minority districts. For example, the court found fault in the fact that Senator Johnson sought a "safe" African-American district. TX J.S. 9a. Yet "safe" is a commonplace term used to describe a *remedial* district that provides a compact, cohesive minority community with an equal opportunity to elect candidates of its choice. *E.g. African American Voting Rights Legal Defense Fund, Inc. v. Villa*, 54 F.3d 1345, 1347 n.4 (8th Cir. 1995)(defining "safe" and explaining its history); *Monroe v. City of Woodville, Miss*, 819 F.2d 507, 510- 511 & n.1 (5th Cir. 1987), *cert. denied*, 484 U.S. 1042 (1988)(after review of the "usage of the term in the relevant jurisprudence," defines "safe district" as one "in which blacks are likely to elect the representative of their choice").

While "safe" normally refers to a super-majority district of 60%-65% population of the protected group, Senator Johnson sought, and District 30 includes only 50% African-American population and less than a majority of VAP. Senator Johnson's definition of "safe district,"

which the district court found to be "racial" are not race-motivated, but merely race-correlated.

Like all politicians, minority incumbents and aspiring incumbents used sophisticated analysis to select voters favorable to their candidacies. In a State with racially polarized voting, there is a strong correlation between race and support for a minority incumbent. Thus, it is quite significant that minority incumbents and aspiring incumbents did not blindly target all voters of the their own race or ethnicity and did not blindly exclude voters of a different race or ethnicity. For example, aspiring incumbent Senator Johnson preferred African Americans who were homeowners over African Americans who were more transient, TX J.S. 30a-31a. In addition, District 30 was extended to include a portion of Grand Prairie, Senator

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criticized by plaintiffs' expert, Dr. Weber, TR II:9, virtually mirrors the language of § 2, *see* PX 6E6, p. 1)(defining "safe" as a district in which blacks are "better able to participate in the electoral process by choosing their own Congressional representative").

The lower court pointed to language in a Narrative of Voting Rights Considerations submitted to the Department of Justice in connection with the request for preclearance. That document, which was not before the Legislature when it acted, indicates that the districts in Houston "result in the maximization of minority voting strength," *see* TX J.S. 21a (quoting PX 4C). Understood in context, the sentence means simply that where the population met the first *Gingles* prong, a majority-minority district was created, just as the Masters in *DeWitt* used the term "maximize" to describe their efforts to do the same. *Wilson v. Eu*, 4 Cal Rptr. 2d at 384, 417.

The district court also cites the "demand" for majority-minority districts by "numerous interest groups who appeared before legislative redistricting committee hearings." TX J.S. 61a. But since the Legislature created majority-minority districts only where consistent with *Gingles* and compactness, the occurrence of the "demands" proves nothing. *See Wilson*, 4 Cal Rptr. 2d at 388-390 (similar "demand[s]" also made by interest groups in California did not constitutionally taint Masters' plan that included deliberately drawn majority-minority districts).

Johnson's home base, with only 14.7% African-American voters, *see supra* p.9. Accommodating minority incumbents may produce district boundaries which have a *correlation* to race and ethnicity, but this correlation, like that between race and partisan affiliation, does not mean that the Legislature was "motivated by a racial purpose or object," *Miller*, 115 S. Ct. at 2487.

Similarly, the Legislature's practice of honoring voter requests to be in a particular district also cannot automatically be equated with racial gerrymandering merely because it is African Americans or Hispanics who make the request. Voters in Texas of all races sought to be placed in particular Congressional districts, and the Legislature attempted to meet those desires to the extent possible consistent with its other districting objectives.[61] A rule that allows white voter requests to be placed in white representatives' districts to be accommodated, but treats compliance with other voters' requests to be placed in minority representatives' districts as constitutionally suspect or illegal, sets up a situation which forces the State to discriminate *against* voters who support minority elected officials. This cannot be the meaning of the *Shaw* and *Miller*

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[61]For example, the overwhelmingly white, Republican community of Park Cities wished to remain in the District of white Republican incumbent Sam Johnson, explicitly expressing the desire *not* to be in the new minority opportunity district. U.S. Ex. 1038. In contrast, the African-American community of Hamilton Park in Dallas and a small African-American community in Plano desired to be in District 30, as did a Jewish community in north Dallas. The *motives* of each of these latter three communities were substantially partisan; each area had previously been in Republican District 3 and would have been kept in District 3 if their requests to be in District 30 had not been accommodated. Equally important, the *State's motive* in honoring the requests was race-neutral and applied evenhandedly to all such requests. The desires of African-American and Jewish Dallas voters are no more suspect or illegitimate than the desires of white Park Cities voters.

rulings by this Court. *Cf. Miller*, 115 S. Ct. at 2497 (O'Connor, J., concurring).

Finally, the district court appears to have placed heavy weight upon the fact that some minority voters who would have been in the most compact versions of Districts 18, 29 and 30 were instead put in the districts of white Democratic incumbents for partisan reasons, and therefore *different* minority voters (who would not have been residents of the most compact versions) were put in to Districts 18, 29 and 30. *See* TX J.S. 63a-64a, 67a-68a. Yet, this substitution of less compact for more compact minority residential areas was not motivated by "race for its own sake." Instead, the motives were a combination of protecting white incumbents and improving the election chances of aspiring members of the Legislature. Senator Johnson, for instance, included middle-income voters further north because she expected that the included group would have a higher voting participation rate. *Id.* at 62a-63a. Similarly, the court acknowledged that the shape of Districts 18 and 29 in Houston was constrained by "the conflicting ambitions of Representative Martinez and then-Senator Gene Green," *id.* at 66a,[62] but erroneously condemned the resulting incidental correlation as based on race.

The district court combined at least three different types of voter placement into an ultimate conclusion of racial gerrymander, failing to distinguish between minority voters who: 1) reside within the boundaries of the idealized, compact versions of the districts that it invalidated; 2) did not reside within those idealized districting versions but were added to the final districts either because they requested the change or were identified as supporters of the incumbents or aspirants for the newly created seats; or 3) were "substituted" for voters in the first category who were removed from the

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[62]*See* TX J.S. 38a n.28 (District 18's shape resulted from configuration of districts around it -- including District 29).

idealized versions to accommodate incumbents (who happened to be white) in adjacent districts. There is no way to know from the district court's opinion how many voters fall into each category. Whatever the numbers, even if they are substantial, each category flows from a motive that is constitutionally permissible and not suspect.

The district court's sweeping characterizations of the "racial" nature of the lines for Districts 18, 29 and 30 also are inconsistent with other findings concerning the importance of incumbent and partisan candidate protection in the line-drawing process and are infected with numerous errors of law, including failure to distinguish between racial *motive* and racial *correlations*. For example, the district court stated:

> Districts 18 and 29 are formed in utter disregard for traditional redistricting criteria[63] and . . . their shapes are ultimately unexplainable on grounds other than . . . racial quotas.

Id. 69a. Yet, a few pages earlier, the district court *found as to Districts 18 and 29* that *"incumbent protection boundaries"* caused the irregular shapes and that *"for the sake of maintaining or winning seats* Congressmen or would-be Congressmen shed hostile groups and potential opponents by fencing them out of their districts," *id.* at 55a-56a.[64]

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[63]As discussed in Point 3 above, none of Texas' districts complied with the list of "traditional" districting criteria adopted by the court below and thus such non-compliance by Districts 18, 29 and 30 does not suggest a *racial* motive.

[64]The court specifically found that the shapes of Districts 18 and 29 flowed from two non-racial factors that *correlate* with race and ethnicity: 1) the tug-of-war between Rep. Martinez and Senator Green "to place their state constituents within the new district" and 2) "to the south Congressman Andrews desired to maintain as many minority constituents [voters who had supported him, who resided in the area proposed by Congressman Washington to be added to District 18] as possible in his

As to District 30, the district court stated:

> We conclude that the contours of Congressional District 30 are unexplainable in terms other than race. Neighborhoods, VTD's and individual streets were split to achieve the district's racial mix. The district was carefully gerrymandered on a racial basis to achieve a certain number of African-American voters; in order to protect incumbents, other African-American voters were deliberately fenced out of the District 30 and placed in other districts that are equally "untraditional."

Id. at 65a. As with Districts 18 and 29, this finding reflects several legal errors: 1) the court uses the wrong test, focusing on violation of its own preferred "neutral" districting criteria, while ignoring the important and traditional Texas concern for protection of incumbents that makes the district contours "explainable" on non-racial grounds; 2) it compounds this error by ignoring the fact that many majority-white districts divided neighborhoods and VTDs to an equal extent[65] so that in Texas, the splitting of neighborhoods cannot legally support an inference of a racial motive; 3) it ignores that highly compact versions of District 30, *with the same racial mix but very different consequences for incumbents*, would have maintained the integrity of neighborhoods but were concededly rejected by the State *for the non-racial motive of protecting incumbents*; and 4) it relies on the erroneous legal conclusion that protection of the incumbents (who happen to be white) in

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Democratic district." *Id.* at 66a. The court also concluded: "In numerous instances, the *correlation* between race and district boundaries is very nearly perfect," *id. at* 59a (emphasis added). Yet, as *Miller* makes clear, mere *correlation* between race and district boundaries is not suspect.

[65] *See, e.g.*, TX J.S. 9a.

adjacent districts is itself part of and evidence of a racial gerrymander.

In effect, the court simply looked at the pattern of voter distribution in the final plan and drew the simple conclusion that race predominated throughout a legislative process that was anything but simple. That finding is, as we have shown, tainted by numerous errors of law and is entitled to no weight. It is also contrary to the emphasis of process and not just result, in *Wright v. Rockefeller*, 376 U.S. 52 (1964), and to what this Court said in *Miller*, 115 S. Ct. at 2487 (quoting *Shaw*, 113 S. Ct. at 2826)(it is the exceptional case where a conclusion of racial gerrymandering can be drawn from a districting plan on its face).

II. *DISTRICTS 18, 29 AND 30 EACH SATISFY STRICT SCRUTINY*

Even if the "strict scrutiny" standard applies to the 1991 Texas Congressional redistricting plan, the judgment of the court below is still wrong.

The Court's decision last Term in *Adarand Constructors, Inc. v. Pena*, 115 S. Ct. 2097, 2117 (1995), makes clear that strict scrutiny is not "fatal in fact." The Court held that "government is not disqualified from acting in response" to "the unhappy persistence of both the practice and the lingering effects of racial discrimination," which the Court realized is an "unfortunate reality" in this country, *id.*

The Constitution permits a State to take voluntary action to remedy past racial discrimination and its current effects. "There is a 'significant State interest in eradicating the effects of past racial discrimination.'" *Miller*, 115 S. Ct. at 2490 (quoting *Shaw*, 113 S. Ct. at 2831). To engage in race-conscious remedial action, the State must have "a strong basis in evidence of the harm being remedied." *Miller*, 115 S. Ct. at 2491. *Accord Wygant v. Jackson Board of Education*, 476 U.S. 267, 277 (1986) (plurality opinion). The State is not required "to prove the invalidity of its own

apportionment scheme" before creating majority-minority districts. *Voinovich v. Quilter*, 113 S. Ct. 1149, 1156 (1993). *See also City of Richmond v. Croson*, 488 U.S. 469, 500 (1989)("strong basis in evidence" needed to justify remedial plan); *Wygant v. Jackson Board of Education*, 476 U.S. at 289-91 (O'Connor, J., concurring) (contemporaneous findings of actual discrimination not required).

A. Districts 18, 29 and 30 Are Supported By A Compelling State Interest

The court below assumed, without deciding, that Texas had a compelling interest in creating majority-minority districts in the areas of the State where Districts 18, 29 and 30 lie. TX J.S. 69a-70a. The evidence supporting the remedial use of race in creating such districts surpasses the "strong basis is evidence" standard. Overwhelming evidence shows that the creation of such districts was justified to remedy a tragic history of discrimination and its current effects. Had it not created majority-minority districts in Houston and Dallas, the State would have fragmented large, politically cohesive minority populations and would have faced virtually certain liability for violating § 2 and, with respect to District 18, § 5 of the Voting Rights Act.

Both *Shaw* and *Miller* strongly suggest that a State has a compelling interest in acting to comply with the Voting Rights Act and thereby remedy the effects of prior discrimination in voting practices. *See Shaw*, 113 S. Ct. at 2830; *Miller*, 115 S. Ct. at 2490. Both § 2 and § 5 of the Act are remedial in nature. Section 2 operates when a history of discrimination interacts with a challenged practice or procedure with the result that "the political processes leading to nomination or election . . . are not equally open" to members of a protected class, in that "its members have less opportunity than other members of the electorate to

participate in the political process and to elect representatives of their choice."[66]

1. *Section 5 of the Voting Rights Act.*

Congressional District 18 has provided African Americans the opportunity to elect their representative of choice to Congress since the election of Congresswoman Barbara Jordan in 1971. Failure to maintain District 18 as one in which African Americans could continue to elect their representative of choice would have made the State vulnerable to a valid objection under either the retrogression or the purpose prong of § 5 of the Voting Rights Act.[67] "[T]he purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Miller*, 115 S. Ct. at 2483 (quoting *Beer v. United States*, 425 U.S. 130, 141 (1976)). In addition to retrogression, given the State's overriding goal of protecting its incumbents, treating African-American incumbent Craig Washington any differently from white incumbents, by failing to create a district from which he could be reelected, would have given

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[66]42 U.S.C. § 1973(b). The constitutionality of § 2 of the Voting Rights Act, as interpreted by this Court's decisions, including *Thornburg v. Gingles* and *Johnson v. De Grandy*, 114 S. Ct. 2647 (1994), has not been questioned by a majority of the Court. In *Johnson v. De Grandy*, the Court ruled, one year after *Shaw*, that "society's racial and ethnic cleavages sometimes necessitate majority-minority districts to ensure equal political and electoral opportunity," *id.* at 2661.

[67]There is no question that it was possible in 1991 to configure a Congressional district in Houston that would permit African-American voters to elect a candidate of their choice. *See supra* pp. 3 n.6, 8.

rise to a very strong case of discriminatory intent, a current violation of the Fourteenth Amendment, as well as § 5.[68]

2. *Section 2 of the Voting Rights Act.*

In *Johnson v. De Grandy*, 114 S. Ct. 2647 (1994), this Court reaffirmed the applicability of the *Thornburg v. Gingles*, 478 U.S. 30 (1986), analysis for evaluating claims under § 2 of the Voting Rights Act. *De Grandy* confirmed that § 2 prohibits "fragmenting the minority voters among several districts where a bloc-voting majority can routinely out-vote them," "where its result, 'interact[ing] with social and historical conditions' impairs the ability of a protected class to elect its candidate of choice on an equal basis with other voters." 114 S. Ct. at 2656 (quoting *Voinovich v. Quilter* and *Thornburg v. Gingles* (citations omitted)). *De Grandy* applied the "three now-familiar *Gingles* factors" as "necessary preconditions" for "establishing vote dilution." 114 S. Ct. at 2656, 2657. Once those preconditions are satisfied, *De Grandy* holds that a complex "totality of the circumstances" analysis is required, in which proportionality or lack thereof is a relevant fact. *Id.* at 2647.

a. "Reasonably compact" opportunity districts.

"[W]hen applied to a claim that single-member districts dilute minority votes, the first *Gingles* condition requires the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice." *Johnson v. De Grandy*, 115 S. Ct. at 2655. The demographic

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[68]A departure from the State's practice of protecting incumbents, by failing to protect the State's only African-American incumbent, while still protecting white incumbents, would have been highly suggestive of discriminatory intent. *See, e.g., Washington v. Davis*, 426 U.S. 229, 241 (1976); *Busbee v. Smith*, 549 F. Supp. 494, 516-17 (D.D.C. 1982), *aff'd*, 459 U.S. 1166 (1983).

evidence summarized above establishes that the Legislature had more than a strong basis for believing that the African-American communities in Harris and Dallas counties were geographically compact and sufficiently large to elect their candidates of choice and that the same was true of the Hispanic population in Harris County.[69]

b. Racially polarized voting and other indicia of barriers to minority political opportunity.

The court below found that "[i]n general, some racial polarization occurs in majority-minority districts in Texas." TX J.S. 22a. Although the court did not make specific findings about Harris and Dallas counties, the existence of racially polarized voting in these counties is established by overwhelming evidence of which the Legislature was well aware.

A federal district court decided *Williams v. City of Dallas*, 734 F. Supp. 1317 (N.D. Tex. 1990), just as the redistricting process was getting underway, in a 100-page opinion well-known to the Legislature.[70] A contemporaneous court finding provides an extremely strong

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[69]*See, supra*, pp. 5-7. In view of the State's failure to give more than lip service to compactness in constructing many of its majority-white Congressional districts, it is arguable that much less compact hypothetical liability districts would have satisfied the first *Gingles* threshold condition. *See Johnson v. De Grandy* 114 S. Ct. at 2659 ("where a State has split (or lumped) minority neighborhoods that would have been grouped into a single district (or spread among several) *if the State had employed the same line-drawing standards in minority neighborhoods that it used elsewhere in the jurisdiction*, the inconsistent standard may be significant evidence of a §2 violation, even in the face of proportionality"). "Reasonably compact" under *Gingles* is a relative concept that draws meaning from the State's general districting practices. *Jeffers v. Clinton*, 730 F. Supp. 196, 207 (1989), *aff'd*, 498 U.S. 1019 (1990).

[70]*See, e.g.*, Lawson Ex. 7 ¶ 15.

basis for remedial consideration of race in districting in the Dallas area. The Court in *Williams* made findings of fact on virtually all of the factors relevant under § 2 of the Voting Rights Act. *See, e.g.*, 734 F. Supp. at 1320 ("history of minority participation in the political process of Dallas is not one of *choice*; it is a record of what blacks and Hispanics have been *permitted* to do by the white majority"); *id.* at 1393 ("white bloc voting in Dallas . . . usually defeats the preferred choice of African Americans"); *id.* at 1394 (summarizing record of white bloc voting since 1975);[71] *id.* at 1347-49, 1363 (racial appeals in Dallas elections).[72] In

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[71]The *Williams* court found that African-American candidates who ran in the 1961, 1963, and 1965 city council elections were "defeated by massive white bloc voting in North Dallas and in the other white areas of the City," *id.* at 1321. More than ten years later, in a declaratory judgment preclearance suit, *City of Dallas v. United States*, 482 F. Supp. 183, 184 (D.D.C. 1979), "the City admitted that the white majority votes as a bloc to enable it to defeat the minority's preferred candidate," *id.* at 1351. In 1983, African-American community leaders chose the best candidate they could find, Marvin Robinson, to run in the next at-large election. They unsuccessfully tried to raise money from white business and community leaders and other whites with whom they had worked. In a runoff, Robinson was soundly defeated by the white candidate. He obtained almost all of the black vote but only 11 percent of the white vote. *Id.* at 1323-1324. Between 1983 and 1990, "no *serious* black candidate [ran] for an at-large seat in the Dallas City Council elections because they perceived that it was impossible to win," *id.* *See also id.* at 1396.

[72]The *Williams* opinion cited "substantial economic disparities between white and minority residents of Dallas," *id.* at 1382; *see also id.* at 1403, as well as educational differences. "Credible testimony established that these socio-economic disparities [in education, employment, housing, and political opportunities available to minorities in Dallas] adversely affect political participation by blacks and Hispanics, and that they are 'a reflection of prior discrimination in the community.'" *Id.* at 1403. The court also found that "for over 50 years," up to as recently as 1989, "the City of Dallas had caused, had supported, and had perpetuated racial segregation and discrimination in low-income public housing programs in this City," *id.* at 1377. The court stated that "the City simply continues

light of this ruling, the Legislature was strongly justified in concluding that the *Gingles* second and third preconditions, as well as the "totality of the circumstances," would weigh in favor of liability under § 2 if it failed to draw a majority-African-American district in Dallas.[73]

Similarly, there was substantial expert evidence submitted to the court below supporting the conclusion that racially polarized voting was pervasive in the Houston and Dallas areas. The State's expert witness, Dr. Allan Lichtman, found a substantial pattern of polarized voting, with African Americans voting cohesively, Hispanics voting cohesively and whites usually voting as a bloc against African-American and Hispanic candidates. In District 29, the mean percent of whites voting for Hispanic candidates in non-judicial elections was 6%. TX Ex. 14, Appendix 2, Table 8. In District 30, the mean white vote for African-American candidates in non-judicial elections was 11%, *id.*

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to refuse to recognize that it has *any* responsibility to help solve the monumental problems that are the legacy of the City's mistake in having the West Dallas project built to keep at least 3,500 blacks out of the white areas of Dallas," *id.* at 1378.

[73]In addition to *Williams*, the State and its political subdivisions had been repeatedly sued under the Voting Rights Act, and court decisions finding high levels of racially polarized voting had been made in virtually every area of the State with significant minority population. *See* J.A. 359-362; TX Ex. 17 at 7-24. As a white Representative who played a key role in constructing districts put it: "There was not a single member of the Texas Legislature who was totally unaware of the existence and history of racially polarized voting in the Houston/Harris County area, in Dallas and in South Texas." J.A. 251-52 (Testimony of Paul Colbert). Senator Rodney Ellis, one of only two African Americans in the State Senate, confirmed: "In the Houston area, people vote largely along racial lines." Lawson Ex. 7 ¶ 6.

at Table 9, while in District 18 it was 16%, *id.* at Table 3.[74] Plaintiffs' expert, Dr. Ronald Weber, agreed with much of Dr. Lichtman's analysis and found similarly high or higher levels of racially polarized voting in Districts 18, 29 and 30 in both primary and general elections. *See* PX 36E, Att. F.[75]

Finally, the court below found: "Texas has a long, well-documented history of discrimination that has touched upon the rights of African Americans and Hispanics to register, to vote, or to participate otherwise in the political

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[74]Dr. Lichtman employed ecological regression analysis, the standard method for estimating the voting behavior of demographic groups from data reported for political units. TX Ex. 14, Appendix 1 (Report of Dr. Allan Lichtman). He supplemented ecological regression with extreme case analysis of 90%+ white, African-American and Hispanic precincts. *Id.* at Appendix 2.

[75]Although the district court noted Dr. Weber's conclusion that the level of racially polarized voting in currently existing districts "for the most part . . . is not legally or politically consequential," J.A. 182 ¶ 41, cited at TX J.S. 23a, this conclusion is irrelevant to the analysis concerning the § 2 or § 5 implications of *failure* to create majority-minority districts. The concept of "legally significant racially polarized voting" is district-specific and depends on whether, given the proportions of minority and non-minority population and the level of bloc voting, whites usually can defeat the candidate of choice of minority voters. *Gingles*, 478 U.S. at 55, 57. This condition by definition does not exist in a successful, remedial district created under the Voting Rights Act. Dr. Weber's conclusion about "legally consequential" racially polarized voting in the current Districts 18 and 30, J.A. 182-183, is not surprising since the white population in these districts is too small to defeat the candidates of choice of the African-American and Hispanic communities. Dr. Weber's report and testimony simply do not address whether "legally significant" racially polarized voting would have existed had the State fragmented the African-American population so that it did not constitute an effective voting majority in any Congressional district in the Houston or Dallas regions.

process." TX J.S. 23a.[76] The only minority candidates elected to Congress from Texas since Reconstruction have been elected from majority-minority districts, such as Districts 18, 29 and 30. *See* TX Ex. 17, at 55 (Report of Dr. Chandler Davidson). The same holds true for State Senate seats. *Id.* at 51.[77]

Had the State not drawn districts to give recognition to the voting strength of the large and geographically compact African-American and Hispanic populations in Houston and Dallas, plaintiffs suing under § 2 of the Voting Rights Act would have been able to present conclusive proof of all three of the *Gingles* threshold conditions and would have had a very high likelihood of prevailing under the "totality of the circumstances" standard. The Legislature was

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[76]*See, e.g.*, State Ex. 17 (Report of Dr. Chandler Davidson); J.A. 357 (Declaration of Dr. Charles L. Cotrell); Lawson Ex. 8 ¶¶ 3-13 (statement of William M. Hale).

[77]Testimony at the Outreach Hearings conducted throughout the State prior to redistricting and testimony admitted at trial establishes that white representatives had been unresponsive and insensitive to the needs of the minority populations in their districts. *See, e.g.*, PX15I at 10 (testimony of T. Molina of the Business Committee of the Southeast Texas Hispanic Council); PX15L at 34-35 (testimony of D. Hicks of the Dallas Black Chamber of Commerce); PX15Q, tape 1, at 13 (testimony of T. Campos); *id.*, tape 2, at 7 (testimony of J. Mata); PX17, tape 1, at 16; PX15Q, tape 1, at 9-10 (testimony of M. Almendarez, representing Imagene de Houston and the Hispanic precinct judges in Harris County); Lawson Ex. 1 ¶¶ 5, 7, 10, 12 (statement of Albert Black); Lawson Ex. 4 ¶¶ 8-13 (statement of Comer Cottrell); Lawson Ex. 11 ¶¶ 13, 14, 16, 17 (testimony of former House member Jerald Larry); Lawson Ex. 17 ¶¶ 3, 4 (statement of former House member Jesse Oliver); Lawson Ex. 7 ¶ 10 (statement of Senator Rodney Ellis); Lawson Ex. 21 ¶ 13 (statement of Grady W. Smithey, Jr.).

more than justified in recognizing this reality and voluntarily complying with the requirements of the Voting Rights Act.

B. Districts 18, 29 and 30 are Narrowly Tailored

1. *Districts 18, 29 and 30 meet this Court's requirements for narrow tailoring.*

This Court's precedents identify the appropriate analysis to determine whether a race-conscious remedy is narrowly tailored. The Court has looked at factors such as 1) the existence of alternative remedies; 2) whether the plan is a "rigid" quota or a flexible "goal"; 3) the duration of the plan; 4) the pool of individuals benefitted by the plan; and 5) the effect of the plan on third parties. *See United States v. Paradise*, 480 U.S. 149, 171-85 (1987); *Wygant v. Board of Education*, 476 U.S. at 279-84. Districts 18, 29 and 30 easily satisfy these tests of narrow tailoring.

There is no available race-neutral alternative means of remedying a history of political exclusion and complying with the Voting Rights Act.[78] Texas' plan is flexible and its voting rights districts do not function as quotas. They do not prohibit non-minorities from running for office. In fact, white candidates have won election in such districts, currently including two of Texas' nine majority-minority districts. *See also, e.g., Johnson v. De Grandy*, 114 S. Ct. at 2665, 2697 (Kennedy, J., concurring in part and concurring in the judgment)("[t]he assumption that majority-minority districts elect only minority representatives . . . is false as an empirical matter"). They do not prohibit any voter from voting for the candidate of his or her choice. The African-American districts have only bare population majorities,

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[78]Scholars have suggested cumulative or limited voting systems, combined with multi-member districts as a less race-conscious alternative, but a federal statute requires, with an exception not applicable in Texas, that members of the House of Representatives be elected from single-member districts. 2 U.S.C. § 2c.

while in District 29, which has not yet elected the candidate of choice of the Hispanic community,[79] Hispanics represent only 55% of the voting-age population. None of these Districts guarantees results, each merely attempts to provide an equal opportunity to minority voters, and the voters in the districts can alter the results every two years.

A Congressional redistricting plan is by its nature temporary. It will last only until the next decennial census, at which time the Legislature without doubt will reevaluate whether racially polarized voting persists and whether race-conscious districting remains necessary.

As to the fourth and fifth factors, a plan that fairly reflects the voting strength of both the minority and non-minority population does not impose an undue burden on third parties. The State's plan does not dilute the voting strength of white voters and does not advantage minority voters, but merely attempts to provide them an *equal* opportunity. The State did not create more minority opportunity districts than § 2 requires and it did not place more African-American or Hispanic voters in the opportunity districts than was reasonably necessary to provide minorities with an opportunity to elect candidates of their choice.[80]

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[79]*See* J.A. 230-31 (TX Ex. 14).

[80]Plaintiffs' expert claimed that Districts 18 and 30, but not District 29, were "overly safe," TR III:81, even though Districts 18 and 30 have only a bare majority in African-American voting age population and less than a majority in VAP. At the same time, Dr. Weber's own plan *increased* the minority concentrations in some districts, for example, to over 73% Hispanic in District 15, which Dr. Weber did not believe was "overly safe." TR III:33. Dr. Weber's "overly safe" assertion was based on speculation that African Americans and Hispanics would vote cohesively as a combined minority coalition. This speculation, unsupported by any evidence, was refuted by strong evidence of lack of coalition voting. *E.g.*, TX J.S. 22a. The District Court apparently did not agree with the "overly safe" claim, which is understandable since this

2. *The court below erred in interpreting narrow tailoring to incorporate its own preferred, "ideal" districting criteria.*

The court below ruled that narrow tailoring requires "the least possible amount of irregularity in shape." TX J.S. 72a. Under this ruling, race plus compactness must be the *exclusive* determinant of districts drawn to serve a compelling interest.

The lower court's narrow tailoring ruling was based on an incorrect understanding of *Shaw*. The district court reasoned: "Because a Shaw claim embraces the district's appearance as well as its racial construction, narrow tailoring must take both of these elements into account." TX J.S. 72a. *Miller v. Johnson* makes clear that the *Shaw* claim does not "embrace" the district's appearance, but only the State's predominant motive. Shape is relevant only as evidence of an improper motive. Once the *motive* for creating a majority-minority district is found to be supported by a compelling interest, there is no reason to incorporate district shape into the narrow tailoring analysis, especially in a State such as Texas where many districts are equally irregular in shape.

a. The decision below forces the State to discriminate against minority communities of interest and minority incumbents.

By imposing a special, regular-shape-maximization requirement *only* on majority-minority districts, the court below mandates that the State discriminate *against* racial minorities, compared to other groups seeking recognition of their voting strength. Texas' majority-white districts are just

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Court has held that different minority groups should not be combined to assess Voting Rights Act compliance unless political cohesion between the two groups is proved. *Growe v. Emison*, 113 S. Ct. 1075 (1993).

as irregularly shaped and cover much more territory, but are not required to maximize compactness.

Under the rule established by the court below, a State may construct *irregular* districts to recognize the voting strength of any group that is not a historically disadvantaged racial minority -- even on the basis of suspect classifications, such as partisan affiliation[81] or religion. Yet, to obtain a district that recognizes their interests, racial minorities must convince Texas to forsake all of its other districting goals and, even more to maximize the regular shape of opportunity districts. This heaps an additional disadvantage on minority groups which already suffer barriers to participation in the political process.[82]

The ruling below also requires the State to discriminate against minority incumbents and would-be incumbents. To achieve other important State and non-racial interests, Craig Washington's District 18 became irregular, just like the districts of white incumbents in Harris County. By singling out one incumbent on the basis of race and requiring his district to maximize regularity of shape, the district court turns the only African-American incumbent into a redistricting pariah, who is constitutionally disabled from cooperating with his colleagues to accommodate highly-valued State interests. It is unfair to force minority politicians to defy the strong State tradition which all other Texas politicians follow as stalwarts of their political organization.

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[81] *See Bandemer*, 478 U.S. at 143 (partisan vote dilution occurs only when electoral system consistently degrades voters' influence on system as a whole).

[82] "Singling out the political processes affecting racial issues for uniquely disadvantageous treatment" violates Equal Protection. *Washington v. Seattle School District No. 1*, 458 U.S. 457, 486 n.30 (1982).

Similarly, although Districts 29 and 30 had no incumbent, two State Senators, one white and one African-American, and a Hispanic Representative, were treated as other functional incumbents in the Texas tradition. The court below erred in ruling that *Shaw* requires the State to treat these aspirants differently than other incumbents, based on their race, or that of their constituents.

b. The decision below violates the principle of federalism.

The lower court's conclusion means that a State has less flexibility when it acts *voluntarily* than when it waits to be sued under § 2. After finding a violation, the federal court must give the State an opportunity to devise a plan that will remedy the violation most consistently with the State's self-defined districting goals. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978)(quoting *Burns v. Richardson*, 384 U.S. 73, 85 (1966))("a State's freedom of choice to devise substitutes for an apportionment plan found unconstitutional shall not be constricted" more than necessary to provide a remedy), 542-43 (same principle applies to remedy for Voting Rights Act violation). Contrary to the holding of the court below, a State interest is not required to be "compelling" before it can be accommodated at the same time that a remedy is crafted. *E.g. Milliken v. Bradley*, 433 U.S. 267, 280-81 (1977) ("[t]he federal courts in devising a remedy must take into account the interests of State and local authorities"). The district court's double standard, allowing States which wait to be sued to use their normal discretion in designing a remedy that best serves the State's interests, is contrary to the federal policy of encouraging voluntary compliance and will open the floodgates of unnecessary litigation.

The definition of narrow tailoring adopted below converts the rationale of *Shaw v. Reno* and *Miller v. Johnson* from an anti-discrimination principle to a constitutional prohibition on *non-racial* influences on the shape of minority

opportunity districts and thus undermines the principle of federalism. Where a regularly shaped version of an opportunity district is rejected for non-racial reasons, such as incumbent protection, partisan political considerations, and the desires of residents, the plan is narrowly tailored because it accomplishes the race-conscious remedial objective in the manner that does least damage to other important State interests. Texas' 1991 Congressional districting plan meets this standard and therefore the district court should be reversed and the plan upheld.

III. *THE PLAINTIFFS LACK STANDING*

United States v. Hays emphasized that the well-established Article III requirements for standing apply with full vigor to the constitutional claim recognized in *Shaw*. *See* 115 S. Ct. 2431 at 2435, *citing, e.g., Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) and *Allen v. Wright*, 468 U.S. 737 (1984); *id.* at 645. *Allen*, the Court said, "made clear that even if a governmental actor is discriminating on the basis of race, the resulting injury 'accords a basis for standing only to "those persons who are personally denied equal treatment" by the challenged discriminatory conduct.'" *Id.* (citations omitted).

The Court "discussed the harms caused by racial classifications in *Shaw* . . . Any citizen *able to demonstrate that he or she, personally, has been injured by that kind of racial classification* has standing to challenge the classification in federal court." *Id.* at 2436 (emphasis added). In *Hays*, the Court concluded that the plaintiffs lacked standing to challenge a Congressional district they alleged was fashioned by "purposefully distinguish[ing] between voters on the basis of race," *id.* (quoting *Shaw*, 113 S. Ct. at 2826), because they did not live within the district and hence could not "suffer those special harms."

Nothing in *Hays* indicates, however, that residency within a challenged district, without more, suffices to

establish standing to sue. Rather, the Court was careful to note that "[v]oters [residing] in such districts *may* suffer the special representational harms racial classifications can cause in the voting context," 115 S. Ct. at 2436 (emphasis added). Thus, to establish their standing in the case at bar, the plaintiffs were required to allege *and prove*[83] not only that they resided within the challenged districts *but also that they personally suffered the harms caused by the alleged racial classifications*. The court below made no findings that would support plaintiffs' standing, and it could not have done so because plaintiffs failed to prove any such injury. Accordingly, this action should be remanded with instructions to dismiss their complaint. *See Hays, id.* at 2436, 2437.

Hays and *Shaw* describe two types of harm that may be suffered by individual residents of a district in the construction of which voters were differentiated on the basis of race: "stigmatic" harm[84] and "representational" harm.[85] None of the plaintiffs in this case alleged or proved that he or she suffered either of such harms. Their complaint alleged no injury, only that they "ha[d] standing,"

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[83]The standing inquiry continues throughout the course of litigation; standing, if controverted, "'must be "supported adequately by the evidence adduced at trial"' to avoid dismissal on standing grounds," 115 S. Ct. at 2435 (citing, *e.g.*, *Lujan*).

[84]"[R]acial classifications . . . in general, . . . 'threaten to stigmatize individuals by reason of their membership in a racial group and to incite racial hostility.'" 115 S. Ct. at 2436 (*quoting Shaw*). Of course, stigmatization by itself is not sufficient unless some personal harm flows from it. *Allen v. Wright*.

[85]"We also noted [in *Shaw*] 'representational harms' the particular type of racial classification at issue in *Shaw may* cause: When a district obviously is created solely to effectuate the perceived common interests of one racial group, elected officials are more likely to believe that their primary obligation is to represent only the members of that group, rather than their constituency as a whole." 115 S. Ct. at 2436 (emphasis added).

J.A. 39 ¶ 31, which was controverted by intervenors, *id.* at 56 ¶ 31, 60 ¶ 28, and was not proved.

First, plaintiff Chen resides in Congressional District 25 (Chen Dep. 21-22) and thus under *Hays* lacks standing to challenge any of the three invalidated districts at issue on this appeal. Second, the testimony of the other plaintiffs was inadequate to demonstrate their standing. Plaintiff Blum's complaints about the representation provided by Congressman Washington were not based on race and were shared by so many of the district's voters that Washington was defeated by Rep. Sheila Jackson Lee. Blum's only purported "stigmatic" injury related to his belief in "color-blind" districting, *see* TR I:23,[86] which was also the only injury asserted by the other plaintiff residing within District 18, *see* Powers Dep. 48.

Other plaintiffs gave evidence inconsistent with assertions of representational harm. Plaintiff Thomas had been "very, very favorably impressed" with nominee Sheila Jackson Lee and expected that she would be a good Representative. Thomas Dep. 74. Ms. Thomas said that Sheila Jackson Lee does not ignore white voters, and that she expected that as a Congresswoman, Rep. Lee would

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[86]This Court has recognized that districting need not be "colorblind" to pass constitutional muster. *E.g.*, *Miller*, 115 S. Ct. at 2490 (permissible to recognize relevant interests of members of racial group who live together in one community); *see, e.g.*, *Bandemer*, 478 U.S. at 147 (O'Connor, J., concurring) (redistricting always involves competing "political, religious, ethnic, racial, occupational, and socioeconomic groups"). It is only when all or virtually all other districting principles are *subordinated* to race that a *Shaw* claim may arise. *Miller*, 115 S. Ct. at 2488. Thus, a complaint that districting was not "colorblind" neither states a claim nor describes an injury in fact that is sufficient to confer standing.

reach out to white voters and try to build racial bridges. *Id.* at 78. Plaintiff Vera stated that he had been represented by African-American Congresswoman Barbara Jordan while he was a resident of District 18; that he visited Rep. Jordan in Washington; and that he "supported" her, thought she was "a good congresswoman, conscientious," who "paid attention to her constituents." Vera Dep. 63.

Plaintiff Barbara Thomas, who now resides in District 29, likewise expressed her belief in "colorblind" districting, Thomas Dep. 69-70, but indicated that she did not regard her Congressman (Rep. Gene Green) as an adequate representative because he is a Democrat, *id.* at 47. Thomas characterized her concern with the consideration of race in the districting process as a "theoretical" one, *id.* at 69-70, and stated that she *did not feel discriminated against* and *was not segregated*, *id.* at 70-71 (emphasis added). The other plaintiff residing in District 29, Mr. Vera, supports "colorblind" districting, Vera Dep. 18, but expressed no complaints about inadequate representation by Congressman Green, whom he corresponds with "all the time" and whose office he visits "quite often," *id.* at 66.

The remaining plaintiff, Pauline Orcutt, resides within District 30 in Dallas. She stated that Congresswoman Johnson does not represent her because she (Orcutt) has a conservative philosophy and Rep. Johnson is an "ultraliberal" who supports President Clinton (Orcutt Dep. 20-24). Orcutt admitted that these complaints, and the disenchantment of some District 30 residents with Rep. Johnson, are not related to race, *id.* at 26, but rather are partisan in nature, *id.* at 84-85.

Strong, uncontradicted evidence shows that the Congressional representatives of Districts 18, 29 and 30 effectively represent their constituents, regardless of race or ethnicity.[87] The only evidence on racial stereotypes shows that minority opportunity districts help break down, rather than reinforce these notions, by giving highly qualified minority representatives, such as Barbara Jordan, exposure in the white community.[88] Moreover, analysis of voting returns in Congressional elections in Texas before and after the 1991 redistricting indicate *increases* in white crossover voting for African-American and Hispanic candidates in the areas now contained in all but two of the State's minority

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[87]*See, e.g.*, Lawson Exs. 7 ¶ 11; 9 ¶ 11; 10 ¶¶ 4, 9 (white voter in District 18); 12 ¶¶ 5, 7; 13, ¶ 3, 21 ¶¶ 9, 11, 16 (white voter in Dallas County); 22 ¶¶ 4, 6-7, 9 (white voter in District 30); 23 ¶¶ 10-14; 25 ¶¶ 7-9, 12 (white voter in District 30).

[88]*See* Lawson Ex. 7 ¶ 6 ("Barbara Jordan's . . . strong example made it easier for other African-American elected officials to gain some level of acceptance in the white community.").

opportunity districts,[89] a further indication that the "representational" harm identified in *Shaw* has not occurred in Texas minority opportunity districts following the enactment of the challenged reapportionment plan.

Under these circumstances, the district court should have dismissed this litigation for want of jurisdiction; and this Court should now vacate the lower court's decision and remand for that purpose.

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[89]The following chart is based upon the information contained in Tables 1-9, Appendix 2, to the Final Report of Dr. Allan J. Lichtman, TX Ex. 14. The body of the report is set out at J.A. 203.

% White Vote for African-American/Hispanic Candidates
in Contests with White Candidates in Texas'
1991 Redistricting Minority Opportunity Districts*

Minority Opportunity District #	1992 Elections	Pre-1992 Elections
15	37%	22%
16	33%	30%
18	29%	24%
20	25%	6%
23	16%	9%
27	50%	27%
28	0%	7%
29	5%	5%
30	64%	15%

*Percentages shown are averages for statewide, countywide and legislative district elections held within the precincts of the minority opportunity districts under the 1991 plan. 1992 averages for Districts 27, 28 and 30 are based on one election.

CONCLUSION

The complaint should be dismissed for lack of standing. In the alternative, the decision of the district court finding Texas Congressional Districts 18, 29 and 30 constitutionally invalid should be reversed, and the complaint should be dismissed.

Respectfully submitted,

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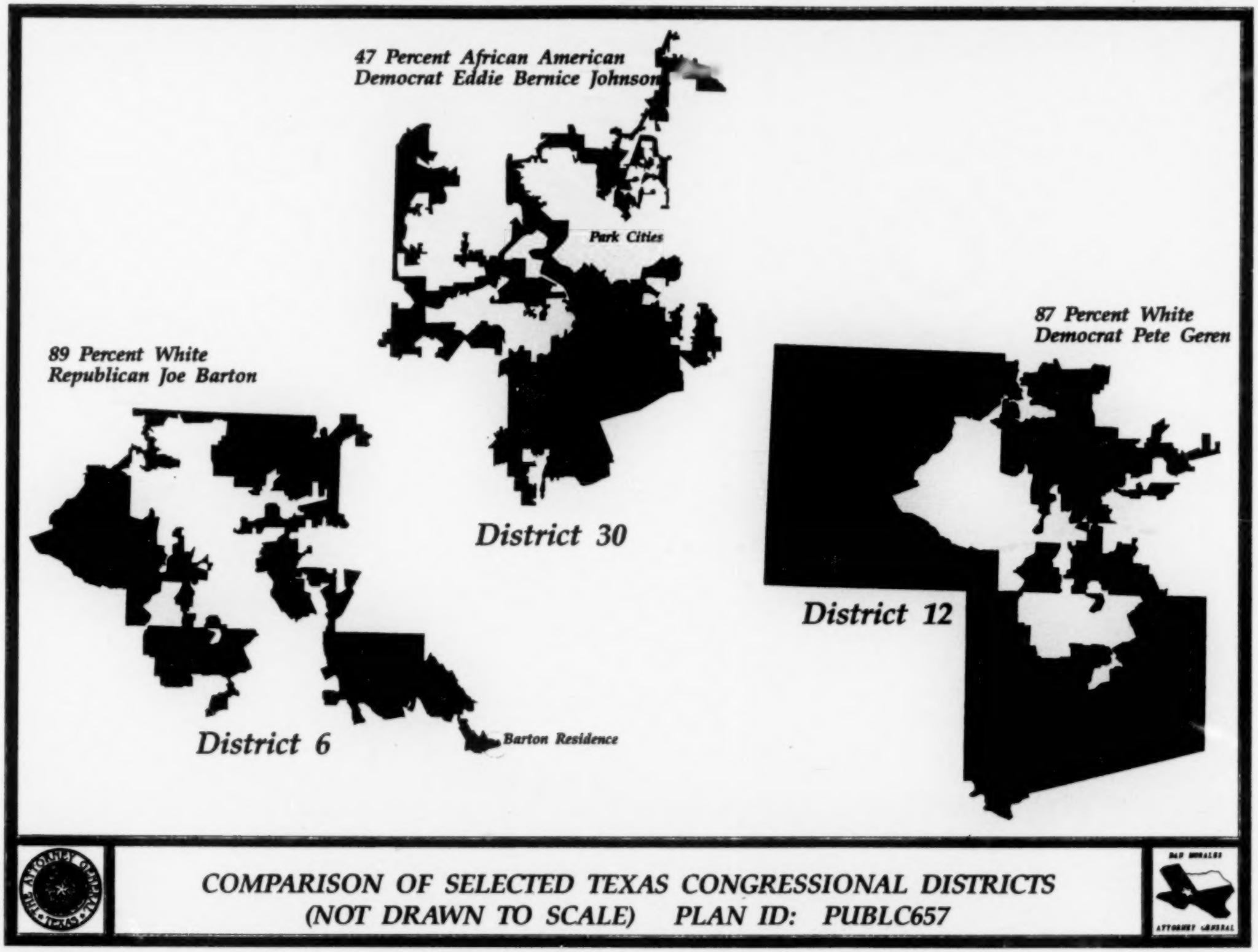

COMPARISON OF SELECTED TEXAS CONGRESSIONAL DISTRICTS
(NOT DRAWN TO SCALE) PLAN ID: PUBLC657

No. 94-805, 94-806, and 94-988

Supreme Court, U.S.
FILED
AUG 28 1995
CLERK

In the Supreme Court of the United States
OCTOBER TERM, 1995

GEORGE W. BUSH, Governor of Texas, *et al.*,
Appellant-Applicants,

vs.

AL VERA, *et al.*, *Appellee-Respondents*

REV. WILLIAM LAWSON, *et al.*,
and
ROBERT REYES, *et al.*, *Appellants*,
vs.

AL VERA, *et al.*, *Appellees*.

UNITED STATES OF AMERICA, *Appellants*,
vs.

AL VERA, *et al.*, *Appellees*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

STATE APPELLANTS' BRIEF ON THE MERITS

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August 1995

QUESTIONS PRESENTED

1. Whether the trial court properly invoked strict scrutiny where the evidence shows that Texas used its customary and traditional districting principle of incumbency protection in drawing minority opportunity districts to comply with the Voting Rights Act?

2. Whether a consistent state tradition of incumbency protection in congressional redistricting is within the category of traditional districting principles which make strict scrutiny inappropriate under *Miller v. Johnson* if observed in a redistricting plan?

3. Whether the Voting Rights Act and the history of past discrimination against minority voters in Texas that the state seeks to erradicate are compelling state interests?

4. Whether narrow tailoring to meet the compelling interests of compliance with the Voting Rights Act and erradication of past voter discrimination in Texas requires the state to set aside other non-racial traditional districting principles, ignore politics, and draw only those minority opportunity districts conforming to the most idealized possible version of compact shape?

5. Whether the injury-in-fact element of constitutional standing is satisfied in an equal protection redistricting case by plaintiffs who do not claim vote dilution, who are not the object of invidious discrimination by the challenged plan, who have not suffered representational harm, and whose only identified harm is not living in a state whose congressional redistricting plan is designed wholly without race consciousness?

LIST OF PARTIES

Plaintiffs

Al Vera
Edward Chen
Pauline Orcutt
Edward Blum
Kenneth Powers
Barbara L. Thomas

Defendants

George W. Bush, Governor of Texas
Bob Bullock, Lieutenant Governor of Texas
Pete Laney, Speaker of the Texas House of Representatives
Dan Morales, Attorney General of Texas
Antonio O. Garza, Secretary of State of Texas

Defendant-Intervenors

United States

Rev. William Lawson
Zollie Scales, Jr.
Rev. Jew Don Boney
Deloyd T. Parker
Dewan Perry
Rev. Caesar Clark

League of United Latin American Citizens (LULAC) of Texas
Robert Reyes
Angie Garcia
Robert Anguiano, Sr.
Dalia Robles
Nicolas Dominguez
Oscar T. Garcia
Ramiro Gamboa

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OPINION BELOW

The Opinion of the three-judge District Court finding unconstitutional Texas Congressional Districts ("CDs") 18, 29, and 30, was entered on August 17, 1994. It is reported as *Vera v. Richards*, 861 F.Supp. 1304 (S.D. Tex. 1994), and is reproduced in the Appendix to the Jurisdictional Statement of the State Appellants (State J.S. App.), at 5a-84a.

JURISDICTION

On September 2, 1994, the trial court entered an Order requiring the Texas Legislature to develop a remedial plan by March 15, 1995. State J.S. App. 2a. On September 19, 1994, the trial court amended its September 2 Order *nunc pro tunc* to enjoin the use of Texas' congressional districting plan for the 1996 congressional elections. State J.S. App. 4a. The State Appellants filed their Notice of Appeal on September 22, 1994. State J.S. App. 85a. This Court noted probable jurisdiction on June 28, 1995. The Court has jurisdiction of this appeal under the provisions of 28 U.S.C. § 1253.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Equal Protection Clause of the Fourteenth Amendment provides:

> . . . nor [shall any state] deny to any person within its jurisdiction the equal protection of the laws.

Sections 2 and 5 of the Voting Rights Act of 1965, 42 U.S.C. §§ 1973 and 1973c, are set out in State J.S. App. 87a-88a.

STATEMENT OF THE CASE

Appellees, six Texas voters who were Plaintiffs below, challenged twenty-four of Texas' thirty congressional districts

under the Equal Protection Clause of the Fourteenth Amendment. *See, Vera*, 861 F. Supp. at 1309. The Plaintiffs claimed that Texas illegally used race and ethnicity in constructing these congressional districts and failed to follow what they alleged were "traditional" districting principles. *Id.* After a five day trial, the court below ruled that three districts, CDs 18, 29, and 30, were unconstitutional under the Fourteenth Amendment. *Id.* The court ordered "that the Texas legislature shall develop on or before March 15, 1995, a new Congressional redistricting plan in conformity with this court's previous opinion during the 1995 regular legislative session that convenes on January 10, 1995 . . . ." State J.S. App. at 2a. The court further enjoined the state from conducting the 1996 congressional elections for the state of Texas according to the districts created by the 1991 plan. State J.S. App. at 4a. This Court stayed the trial court's injunction, and, on June 28, 1995, this Court noted probable jurisdiction, thus leaving the stay in effect.

SUMMARY OF ARGUMENT

This case presents the Court with the opportunity to provide constitutional guidance to states that have created minority opportunity congressional districts in voluntary compliance with the requirements of the Voting Rights Act and in compliance with their own customary and traditional districting practices. At issue in this appeal is the constitutionality of CDs 18 and 30, which are African-American opportunity districts located in the most populous metropolitan areas of Texas, Harris and Dallas Counties, respectively, and CD 29, which is an Hispanic opportunity district in Harris County.

The evidence establishes that the Plaintiffs failed to prove that the Texas Legislature subordinated race-neutral districting principles to racial considerations. In fact, the record establishes quite the opposite: the shapes of these districts resulted from the concern for incumbency protection

and the application of the constitutional doctrine of one-person, one-vote, as well as the desire to make the districts minority opportunity districts.

The trial court understood the predominant role that incumbency protection played in the drawing of all of Texas' thirty districts. Ultimately, it ruled that of the twenty-four districts challenged by the Plaintiffs, only CDs 18, 29, and 30, were unconstitutionally gerrymandered. Although the Legislature drew these districts as opportunity districts in order to comply with the Voting Rights Act, the ultimate shapes of these districts, like those of the other districts that the trial court found constitutional, are due predominantly to battles over constituents that occurred as the lines were being drawn. Therefore, the trial court erred for several reasons.

First, the trial court erroneously invoked strict scrutiny because of its refusal to consider incumbency protection as a traditional race-neutral districting principle. The trial court assumed that only those districting principles expressly referred to in *Shaw v. Reno*, 509 U.S. ___, 113 S.Ct. 2816 (1993), were to be considered traditional. Having rejected incumbency protection as a traditional districting principle, the trial court concluded that race was the predominant factor considered in drawing CDs 18, 29, and 30.

Second, even if the trial court properly invoked strict scrutiny, the state presented sufficient evidence showing that the districts as drawn were narrowly tailored to achieve a compelling state interest. Texas has a compelling state interest in complying with the Voting Rights Act. The record shows that the Texas Legislature only created those minority opportunity districts necessary to comply with § 2 and § 5 of the Voting Rights Act, consistent with the constitutional objective of one-person, one-vote, and consistent with its customary redistricting objective of incumbency protection.

If affirmed, the trial court's judgment means that a state may not apply its own customary and traditional

districting principles if those principles differ from those delineated in *Shaw v. Reno*. Moreover, if affirmed, the trial court's judgment elevates shape to constitutional dimension and contravenes this Court's often stated axiom that "reapportionment is the duty and responsibility of the State." *Miller v. Johnson*, ___ U.S. ___, 115 S.Ct. 2475, 2487 (1995), and cases cited therein. Finally, if affirmed, the trial court's judgment would severely hamper the ability of a state to comply voluntarily with the requirements of the Voting Rights Act.

Texas respectfully requests this Court to reverse the judgment of the trial court and to render judgment in its favor.

ARGUMENT

The record in this case establishes two facts without dispute. First, when the Texas Legislature redrew election districts after the 1990 census it had as its overriding goal incumbent protection. To the greatest extent possible it intentionally drew congressional, State Board of Education, state Senate, and state House of Representatives districts that preserved the ability of its incumbents of both parties to be reelected. Second, the Legislature decided early in the redistricting process that the three additional congressional seats that Congress reapportioned to Texas after the 1990 census would all be new minority opportunity voting districts to be located in the Dallas, Houston, and South Texas areas. These areas, with significant minority populations and significant minority population growth, have long-standing histories of racially polarized voting and minority underrepresentation. This case presents important questions concerning whether the interplay of these two facts caused Texas to racially gerrymander CDs 18, 29, and 30 in violation of the Equal Protection Clause of the Fourteenth Amendment.

I.
THE TEXAS LEGISLATURE DID NOT RACIALLY GERRYMANDER CONGRESSIONAL DISTRICTS

A. The Trial Court Erred in Invoking Strict Scrutiny

1. The Texas Legislature Did Not Rely on Race in Substantial Disregard of Its Customary and Traditional Districting Practices

Two primary objectives impelled the redistricting process that resulted in the creation of Texas' congressional districts: adherence to the constitutional requirement of one-person, one-vote and incumbency protection.[1] A third objective, compliance with the requirements of § 2 and § 5 of the Voting Rights Act, played a lesser, albeit important, role.[2]

The uncontroverted evidence shows that incumbency protection is a traditional districting principle in Texas and was the "prime directive" in this plan. *See,* Joint App. at 246-51. Although other considerations such as compactness and respect for political subdivisions or community lines have

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[1] "Incumbents," in the Texas tradition, included not only sitting members of Congress, but also sitting members of the Texas Legislature who intended to run for open congressional seats: "In each of the new districts we attempted to draw districts that would permit certain candidates who wanted to run to be elected from those districts." U.S. Ex. 1094, House Floor Debate 8/21/91, Joint App. at 371. Thus, Texas' three new congressional districts also had "incumbents": then-State Sen. Frank Tejeda in CD 28, then-State Rep. Roman Martinez and then-State Sen. Gene Green in CD 29, and then-State Sen. Eddie Bernice Johnson in CD 30. These functional incumbents received the same consideration from the Legislature as did the sitting members of the Texas congressional delegation.

[2] Of the thirty congressional districts, nine are majority-minority districts created to satisfy the requirements of the Voting Rights Act.

sometimes also played a role in the process, these other considerations are not required by state law and have always been subordinated to incumbency protection, particularly at the congressional level.[3] *See, White v. Weiser*, 412 U.S. 783, 93 S.Ct. 2348 (1973). Texas has benefited greatly from the seniority of its Congressmen and has gone to great lengths to protect this seniority, even when the cost has been convoluted districts.

Ted Lyon, a former member of both the Texas House and Senate, testified, "[C]ompactness is not a 'traditional redistricting principle' in Texas. For the most part, the only traditional districting principles that have ever operated here are that incumbents are protected and each party grabs as much as it can." *Vera*, 861 F.Supp. at 1313, n. 9. According to Oscar Mauzy, a former Texas Senator and Texas Supreme Court Justice, "Neither pretty districts nor compact districts are a priority in Texas, and they have not been since well before I was involved in districting, if ever." *Id.*[4] The 1991 congressional redistricting plan was but the latest example of this approach.

The trial court correctly noted that Texas did not redraw its congressional districts at all between 1933 and 1957. *Vera*, 861 F.Supp. at 1312. After the 1960 census Texas gained an additional seat in the House of Representatives. Texas "redistricted" by making this additional seat an at-large district. This allowed all incumbents' districts to remain intact. Also in the 1960's, the Legislature created the famous "Tiger" Teague district that ran from Fort Bend County just south of Houston through rural

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[3] Although the Texas Constitution requires that House of Representatives districts cut county lines as little as possible, no such requirement exists with respect to congressional, senatorial, or board of education districts.

[4] The testimony of Lyon and Mauzy is uncontradicted.

east Texas into the southern ends of both Dallas and Tarrant Counties. *Id. See, also,* St. Ex. 41, Joint App. at 336.

In the 1970's, incumbency protection continued to be the primary objective. The trial court noted that the

> . . . 1971 round of Congressional redistricting was notable at least in part because of the great lengths to which the state legislature went to solicit the views of incumbent congressmen. The Senate Congressional Redistricting Subcommittee actually flew to Washington to meet with the Texas delegation as a group and on an individual basis.

Vera, 861 F.Supp. at 1312-13. This round of redistricting resulted in a plan that was challenged on one-person, one-vote grounds which this Court ultimately resolved. *White v. Weiser, supra.* In that case, this Court acknowledged the role that incumbency protection had played in the 1971 plan:

> The State asserts that the variances [in population] present in S.B. 1 nevertheless represent good-faith efforts by the State to promote "constituency - representative relations," a policy frankly aimed at maintaining existing relationships between incumbent congressmen and their constituents and preserving the seniority the members of the State's delegation have achieved in the United States House of Representatives. We do not disparage this interest.

412 U.S. at 791, 93 S.Ct. at 2352-53 (footnote omitted). Although this Court held that the deviations in population in the 1971 plan could not be justified by this interest, the Court also held that the trial court erred in imposing a remedy that was not consistent with this state policy. The Court repeated

the statement that it had made in *Burns v. Richardson*, 384 U.S. 73, 89 n. 16, 86 S.Ct. 1286, 1295 (1966) concerning legislative redistricting: "The fact that district boundaries may have been drawn in a way that minimizes the number of contests between present incumbents does not in and of itself establish invidiousness." *Weiser*, 412 U.S. at 797, 93 S.Ct. at 2357-58.

This tradition of protection of congressional incumbents explicitly played a crucial role in the plan adopted in 1991. For example, during floor debate in the Texas House of Representatives, Tom Uher, the chairman of the House Redistricting Committee, explained that the committee

> . . . tried to recognize the value that each congressman has given to us.
>
> Because of the flexibility that we had due to the fact that we had three additional seats, we were able to try to design districts that would recognize each incumbent and how that incumbent might be able to win in a district, having a reasonable chance to win in that district. In each of the new districts, we attempted to draw districts that would permit certain candidates who wanted to run to be elected from those new districts. So the flexibility has been built into the plan to recognize the overall contribution that each member of the delegation has provided.

U.S. Ex. 1094, House Floor Debate 8/21/91, Joint App. at 370-71. Opposing attempts to make major changes to the committee's plan, Rep. Uher said:

> The approach that we've tried to take with the plan that we've debated all day is to recognize a value that each congressman that we have

> contributes to the economy of this State and to your local area. And we've worked very hard.
>
> I have met with almost every congressman that sits in Washington that represents all of us. And it's very important that we keep a congressional delegation that is effective and influential in Washington.
>
> • • •
>
> We have avoided partisanship throughout this plan, and I know it hasn't satisfied some people, but the plan we have drawn reflects the value and the contributions that each of our congressman have given to this State over many years of dedicated service.

Id., Joint App. at 372-73.

Even opponents of the plan recognized the degree to which incumbency protection had shaped the districts. Republican Rep. Ogden said:

> . . . in order to protect an incumbent Dallas congressman and an incumbent Houston congressman, county lines were not respected, urban boundaries were not respected, precinct boundaries were not respected--in fact, the only thing that doesn't appear to be split in my home town is households.
>
> This sad story is repeated all over the state.

Id., Joint App. at 374-75. Republican Rep. Gruesendorf argued:

> Communities throughout the State are surgically split in what appears to be illogical, irrational and erratic patterns. But if you look at election result data throughout the State, you'll find that these lines are very logical and very rational. The lines have been drawn, dissecting communities very creatively in order to pack Republicans and maximize Democratic representation.
>
> • • •
>
> It has been said that the primary reason for the adoption or the drafting of this plan is to protect incumbents. I don't have a problem with protecting incumbents; but I think protection should center around keeping their communities of interest together, keeping their congressional districts compact, and maintaining their current constituencies, not packing one party or another in order to draw noncompetitive districts so that they've got sure reelection opportunities.

Id., Joint App. at 376-77. He continued his criticism with these comments:

> The meandering of districts in this plan reaches new heights of blatant gerrymandering. Many of the districts in this plan may be fairly referred to as uncouth, tortuous and bizarre. The idea of compactness has been totally abandoned and thrown out the window when it conflicts with partisan advantage.

Id., Joint App. at 379. Similar comments were voiced by Republican Rep. Hill concerning the district lines in Dallas

County. *Id.*, House Floor Debate 8/25/91, Joint App. at 383-84.[5]

These comments from the legislative debates were echoed at trial by the Plaintiffs' witness, Rep. Grusendorf, concerning the ultimate shape of districts in the Dallas-Fort Worth area: "The driving force for the crazy lines that you find in North Texas are an attempt to save Martin Frost." Tr. Vol. I at 81.

Clearly, legislators from both parties understood that incumbency protection was the goal embodied in this plan. As critics of the plan pointed out, incumbency protection was the major cause of the irregular shapes of districts in all parts of the state. Other factors contributed to this effect.

Technological advances during the 1980's made possible a degree of precision in the drawing of legislative districts that was not formerly possible.[6] With the level of sophistication in computer resources now available, Texas was able to draw thirty congressional districts with no variation in population. According to the 1990 census, each of the thirty districts had 566,217 people living in them. However, achieving absolute zero deviation had a cost. District lines cannot both be regular and maintain absolute equality of population. Tr. Vol. I at 43. Inevitably, the quest for no deviation made easier by this technology results in irregular boundaries between districts.[7]

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[5] These criticisms led to legal claims when Republican plaintiffs challenged this plan, in part, as a partisan gerrymander. *Terrazas v. Slagle*, 821 F.Supp. 1162 (W.D. Tex. 1993). However, at trial, the plaintiffs lost on this claim. *Id.* at 1172-75.

[6] One witness described the legislative use of this new technology as being like "kids with a new toy." St. Ex. 15, Statement of Paul Colbert, Joint App. at 255. He also noted that given the extremely short time that census data was available before the end of the legislative session, little effort was made to smooth out the ragged boundaries of districts. *Id.*

[7] The trial court viewed these advances in technological ability negatively. It stated:

This quest for zero deviation, coupled with incumbency protection, led to the creation of districts throughout the state that have highly irregular and often extremely convoluted boundaries. The trial court noted that districts in virtually every urban area had such irregular boundaries and convoluted shapes. *Vera*, 861 F.Supp. at 1317-18, 1326-28.[8] Of course, the districts that are located *entirely* in these urban areas are the most irregular in shape.

For example, in the Fort Worth area Democrat Pete Geren's CD 12 and Republican Joe Barton's CD 6 intertwine in an intricate dance that separates likely Democratic and Republican voters. *See*, St. Ex. 8(2), Joint App. at 192. Each of these districts is heavily Anglo (73.6% Anglo and 87.6% Anglo, respectively). *See*, Pl. Ex. 34-O, Joint App. at 154-60. In the Houston area, Republican Tom DeLay's CD 22 (69.3% Anglo) threads its way between CD 25, then represented by Democrat Mike Andrews (53.0% Anglo) and CD 9, then represented by Democrat Jack Brooks (66.9% Anglo). *Id. See, also,* St. Ex. 8(3), Joint App. at 193.

> . . . never before have districts been drawn on a block-by-block or neighborhood- or town-splitting level to corral voters perceived as sympathetic to incumbents or to exclude opponents of the incumbents. This form of incumbent protection is much different in degree from the generalized, and legitimate, goal of incumbent and seniority protection previously recognized by the Supreme Court.

Vera, 861 F.Supp. at 1334. Nowhere does the trial court explain why the use of the computer makes the state's interest in incumbency protection different. The principle remains the same; only the tools used to effect the principle have changed. The trial court erred in disparaging the state's interest in incumbency protection, merely because computers more effectively permit the state to protect its incumbents.

[8] Incumbency protection caused similar irregularities in the urban portions of Texas House of Representatives and Texas Senate districts created by the same Legislature. *See*, St. Ex. 15, Testimony of Paul Colbert, Joint App. at 246-49.

The evidence, acknowledged by the trial court and not disputed by the Plaintiffs, establishes incumbency protection as a traditional districting practice in Texas and shows that the current congressional plan continued this tradition. It should not be surprising, therefore, that the ultimate shapes of CDs 18, 29, and 30 were also affected by this Texas tradition.

In Houston, as of the 1990 census, CD 18 was underpopulated. One proposal required it to take in additional population to the south and thereby mirror an African-American majority Texas Senate district that was very compact. However, this proposal was rejected because it would have destroyed the Democratic character of CD 25 and endangered the reelection prospects for incumbent Mike Andrews. *Vera*, 861 F.Supp. at 1325, U.S. Ex. 1071 at 47-48. CD 18, therefore, had to take in its additional population by going north. Going directly north cut straight through the proposed Hispanic CD 29. The resolution of these competing interests required one of the two minority opportunity districts to wrap around the other. For political reasons, the Legislature decided to wrap CD 18 around CD 29 to encompass the African-American populations located just south and north of downtown.[9]

The ultimate shape of CD 29 was the result of the complex political dogfight between two aspirants for the seat, State Rep. Roman Martinez and State Sen. Gene Green. Martinez' original proposal for CD 29 was a regular and compact east-west district that largely followed the lines of his House of Representatives district. Pl. Ex. 9. Significantly, it

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[9] The plan for the Texas Senate made the opposite choice. In that plan, the Hispanic majority senatorial district wraps around the more compact African-American majority district. *See*, St. Ex. 15, Joint App. at 249. State Rep. Roman Martinez, an aspirant for this congressional seat and a member of the House Redistricting Committee, was unwilling to use the state senate "wrap" for the congressional plan because it included more territory that was favorable to State Sen. Gene Green, also an aspirant for the seat. *Id.*

did not include Green's residence and included very little of his Senate district. U.S. Ex. 1071 at 48. During the legislative process, the proposed district was pushed and pulled between the competing aspirants, each seeking to draw a district that would be more favorable to his candidacy and less favorable to his opponent's. *See, also, Vera,* 861 F.Supp. at 1324-25; Tr. Vol. IV at 31-38, 42-44. The ultimate resolution was a compromise between Martinez and Green that included both men's residences and included large portions of both men's legislative districts. *Id.* at 49. Thus, this tug-of-war between political aspirants was the major force in the ultimate shape of CD 29.

The final configuration of CD 30 in Dallas resulted from similar political forces. State Sen. Eddie Bernice Johnson was the chair of the Senate Subcommittee on Congressional Districts. She announced early in the redistricting process that she would be a candidate for this new seat, and she drew a highly compact district from which she could easily be elected. *Vera,* 861 F.Supp. at 1321. However, the configuration of the proposed district was unacceptable to two incumbent Democratic Congressmen, Martin Frost and John Bryant, because it siphoned off too many of their Democratic voters and endangered their own reelection chances. *Id.* The horse-trading between these incumbents and Sen. Johnson then began. As Johnson's proposed district shed Democrats in the south to Frost and Bryant it began to send tendrils to the north and west to find other Democrats to replace them. The evidence shows that these tendrils contain much *lower* percentages of minority residents than does the core of the district.[10] *See,* St. Ex. 33, Joint App. at 335. These

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[10] Indeed, the most vicious fight between Johnson and Frost was over Anglo Democratic voters in Grand Prairie to the west of Dallas. *See,* St. Ex. 33 at 5th segment, Joint App. at 335. Both Johnson's senate district and Frost's congressional district had included these voters and both wanted to include them in their new districts. Ultimately, they were split between the two. Joint App. at 388.

tendrils have the effect of *lowering* the overall African-American concentration in the district. In effect, they make the district more, rather than less, multi-ethnic.[11]

The ultimate resolution of the battle to preserve all incumbents in the Dallas-Fort Worth area was a complicated three-way swap among Democrat Frost's CD 24, Republican Joe Barton's CD 6, and Democrat Pete Geren's CD 12 that resulted in Frost's and Geren's districts becoming more Democratic and Barton's district becoming more Republican.[12] U.S. Ex. 1071 at 39-40.

In short, the record establishes that the configurations of CDs 18, 29, and 30 were predominantly the result of incumbency protection. Thus, the Legislature did not rely on race "in substantial disregard of customary and traditional districting practices." *Miller v. Johnson*, *supra*, ___ U.S. at ___, 115 S.Ct. at 2497 (O'Connor, J. concurring)("To invoke strict scrutiny, a plaintiff must show that the State has relied on race in substantial disregard of customary and traditional districting practices.")

On these undisputed facts, it was clear error for the trial court to conclude that race, incumbency protection, predominated in the drawing of CDs 18, 29, and 30.[13]

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[11] CD 30 is thus not an example of racial "Balkanization" as described by this Court in *Shaw v. Reno* and *Miller v. Johnson*. It is, rather, a multi-ethnic district (50.9% African American, 17.1% Hispanic, 31.4% Anglo, and 2.4% other) within a single metropolitan area. *See*, Pl. Ex. 34-O, Joint App. at 160

[12] Of course, each also became far more convoluted as well. *See*, St. Ex. 8(2), Joint App. at 192. The trial court did not find that this kind of political horse-trading violated the Equal Protection Clause.

[13] The trial court makes much of the testimony given by Congresswoman Eddie Bernice Johnson in *Terrazas v. Slagle*, *supra*. *See*, *Vera*, 861 F.Supp. at 1319-23. It appears to suggest that her testimony in this case concerning non-racial reasons for many of CD 30's irregular lines ought not to be credited. However, the court acknowledges the other testimony in this case that corroborates Congresswoman Johnson's testimony, *id.* at 1321-23. Moreover, as

2. The Trial Court Erroneously Refused to Recognize Incumbency Protection as a Customary and Traditional Districting Principle Used by the Texas Legislature

The trial court refused to recognize Texas' tradition of incumbency protection as a permissible districting principle because *Shaw* did not expressly refer to it as a "traditional districting principle."[14] This rigid reading of *Shaw* impelled the trial court's erroneous invocation of strict scrutiny.[15] The trial court's rigid interpretation of the term "traditional districting principle" does not comport with the more flexible use of that term in *Miller* in which this Court said that to prove a racial gerrymander:

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noted above, the legislative debates, which predated *Terrazas*, also corroborate her testimony. Finally, it should be noted that in addition to the partisan gerrymander claim discussed above, *Terrazas* was an unsuccessful constitutional and § 2 challenge in which the plaintiffs alleged that Texas had improperly diluted the votes of minorities. In that context, the consideration given by the state to race was the primary focus of both the plaintiffs' case and the state's defense. Other, non-racial, considerations that influenced the shapes of the districts are secondary in such a case. It, therefore, should not be surprising that her testimony in that case had a different emphasis than her testimony in this case.

[14] Specifically, *Shaw* stated:

> So, too, would be a case in which a State concentrated a dispersed minority population in a single district by disregarding *traditional districting principles such as compactness, contiguity, and respect for political subdivisions.*

Shaw v. Reno, 509 U.S. ___, ___, 113 S.Ct. 2816, 2827 (1993)(emphasis added).

[15] The trial court noted that "*Shaw* nowhere refers to incumbent protection as a traditional districting criterion." *Vera*, 861 F.Supp. at 1334.

> . . . a plaintiff must prove that the legislature subordinated traditional race-neutral districting principles, *including but not limited to* compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests, to racial considerations.

___ U.S. at ___, 115 S.Ct. at 2488 (emphasis added).[16] *Miller* makes clear that the list of traditional districting principles referenced in *Shaw* was a non-exclusive list. This more flexible use of the term "traditional districting principles" respects the policy choices made by the states in their redistricting decision-making and, therefore, comports with the well-established principle that "reapportionment is primarily the duty and responsibility of the State." *Miller v. Johnson*, ___ U.S. at ___, 115 S.Ct. at 2488 (and cases cited therein).[17] Thus, the trial court incorrectly applied strict scrutiny to the facts of this case.

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[16] The *Miller* trial court opinion, which this Court affirmed, also understood "traditional districting principles" to be a flexible term:

> This analysis is made a bit easier by the existence of defined and recognized "traditional districting principles" that influence nearly all redistricting efforts. The *nonexclusive list* includes contiguity, compactness, protecting the integrity of political subdivisions, cognizance of "communities of interest," negotiating geographic barriers, and *protecting incumbents*.

Johnson v. Miller, 864 F.Supp. 1134, 1369 (S.D. Ga. 1994)(emphasis added).

[17] The trial court's rigid treatment of *Shaw's* non-exclusive list also ignores this Court's explicit treatment of incumbent protection as a permissible redistricting objective. *See, White v. Weiser, supra; Burns v. Richardson, supra. See, also, Karcher v. Daggett*, 462 U.S. 725, 740, 103 S.Ct. 2653, 2663 (1983)("Any number of consistently applied legislative policies might justify some [population variation among districts], including, for instance, making districts compact, respecting

The court's opinion acknowledges that incumbency protection played an important role in the drawing of Texas' congressional districts. *See, Vera,* 861 F.Supp. at 1317-18. In fact, the court correctly concluded that the districts attacked by the Plaintiffs, other than CDs 18, 29, and 30, were not racial gerrymanders although "there is an extremely high correlation between the irregular features of many of these districts and the racial populations they are drawn to include or exclude." *Id.,* 861 F.Supp. at 1345. The court correctly determined that "both race and politics influenced the divisions of these towns between Congressional districts," *id.,* and correctly held that "[i]t does not follow, however, that racial gerrymandering occurred." *Id.*

The court applied a wholly different standard to CDs 18, 29, and 30 because many of the Democratic voters in and around those districts are also minority members.[18] With respect to CD 30 in Dallas, the trial court noted that

> . . . the infighting among Congressman Frost, Bryant, and then-Senator Johnson for "sympathetic" voters was fierce. As it happens, however, many of the voters being fought over were African-American. The State cannot have it both ways. It cannot say that African-American voters are African-American when they are moved into District 30, but they are merely "Democrats"

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municipal boundaries, preserving the cores of prior districts, *and avoiding contests between incumbent Representatives.* As long as the criteria are nondiscriminatory . . . these are all legitimate objectives that on a proper showing could justify minor population deviations.")(emphasis added)

[18] The high percentage of African-American and Hispanic voters who vote Democratic in Harris and Dallas Counties is graphically demonstrated by comparing Pl. Ex. 34-H2, Joint App. at 150, to St. Ex. 9A, Joint App. at 195, and by comparing Pl. Ex. 34-H8 and 34-H9 , Joint App. at 151-52, to St. Ex. 9A, Joint App. at 194.

> when they are deliberately placed in a contiguous district for the purpose of bolstering the re-election chances of other Democrats.

Id., 861 F.Supp. at 1338-39. With respect to CDs 18 and 29 in Houston the court stated:

> Incumbent Democrats were fencing minorities into their districts or into the new majority-minority districts, while those same minorities were effectively being removed from Republican incumbents' districts.

Id., 861 F.Supp. at 1341.

Although this process of sorting likely Democratic and Republican voters in order to protect incumbents is exactly the same as that which occurred throughout the state, the trial court would not permit it in CDs 18, 29, and 30 because the voters sorted are also minority members. Thus, the court has applied a wholly different standard to these districts.

In essence, the trial court's ruling prohibits Texas from using its customary and traditional districting practice of incumbent protection when drawing a minority opportunity district if the resulting district looks strange. This anomalous result, if allowed to stand, would require the state to treat three minority opportunity districts located in its urban areas differently from its other twenty-seven congressional districts because those minority opportunity districts would have to be drawn without any consideration given to the traditional objective of incumbent protection. This result contravenes *Miller*.

3. The Constituencies in CDs 18, 29, and 30 Are Not Widely Separated by Geographical and Political Boundaries

The three districts involved here do not suffer the ill of a racially gerrymandered district as defined in *Shaw v. Reno, supra.*

> A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise *widely* separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid.

509 U.S. at ___, 113 S.Ct. at 2827 (emphasis added).

Although *Shaw* does not quantitatively define what it means by "widely separated by geographical and political boundaries," the facts in *Shaw* serve to illustrate the Court's concerns. In *Shaw*, the North Carolina General Assembly drew District 12 to be an African-American opportunity district. As drawn, District 12 was 160 miles long and in some parts no wider than I-85. It contained within its borders various communities of interest - tobacco country, financial centers, and manufacturing areas. It was comprised of ten counties, and it remained contiguous "only because it intersects at a single point with two other districts before crossing over them." *Id.*, 509 U.S. at ___, 113 S.Ct. at 2820-21.[19]

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[19] Texas expresses no opinion about the appropriateness of this North Carolina district. The trial court has held that the district is narrowly tailored to further a compelling state interest, *Shaw v. Hunt*, 861 F.Supp. 408 (E.D. N.C. 1994). That court is in a far better position to make such a judgment than is Texas.

Last term, *Miller v. Johnson* further defined the meaning of the phrase "widely separated by geographical and political boundaries." In *Miller,* the Georgia Eleventh District, which this Court invalidated as a racial gerrymander, included "the black neighborhoods of metropolitan Atlanta and the poor black populace of Chatham County, though 260 miles apart in distance and worlds apart in culture." *Miller*, ___ U.S. ___, 115 S.Ct. at 2484. Eighty percent of District Eleven's African-American population resided in the outlying appendages of the district. This Court concluded that the "social, political and economic makeup of the Eleventh District tells a tale of disparity, not community." *Id.*

Unlike District 12 in *Shaw* and the Eleventh District in *Miller*, CDs 18, 29, and 30 are not "widely separated by geographical and political boundaries," as that phrase has been defined by those cases. Quite the contrary is true. CDs 18 and 29 lie totally within Harris County. The vast majority of CD 30, 98.4% of it, lies within Dallas County. The remaining 1.6% lies in Collin and Tarrant Counties, which are adjacent to Dallas County and all of which are within the Dallas-Fort Worth Metroplex region. St. Ex. 18, Joint App. at 266-303. The longest axis for CD 18 is only 39 miles; for CD 29, it is 43 miles; and, for CD 30, it is 42 miles. All parts of these districts can be traversed in less than an hour. *Id.* Each of the three districts lies within a single media market, newspaper market, and job market. All residents of each of the districts are urban dwellers, sharing concerns unique to urban dwellers, like crime, drugs, and mass transit, to name a few. *Id.* Moreover, unlike District 12 in Shaw and the Eleventh District in *Miller,* the majority of the minority population of each district resides in the core of each district rather than in the extremities of each district. *See, e.g.* Joint App. at 335, 341, and 342.

In short, the concerns raised by this Court in *Shaw* and *Miller* simply do not exist in this case: individuals of the

same race are not widely separated by geographical and political boundaries.

4. CDs 18, 29, and 30 Are Not the Result of Racial Segregation

Shaw v. Reno recognized that

> In some *exceptional* cases, a reapportionment plan may be so highly irregular that, on its face, it rationally cannot be understood as anything other than an effort to "segregat[e] . . . voters" on the basis of race. *Gomillion [v. Lightfoot],* 364 U.S. [339,] 341, 81 S.Ct.[125,] 127. *Gomillion*, in which a tortured municipal boundary line was drawn to exclude black voters, was such a case. So, too, would be a case in which a State concentrated a dispersed minority population in a single district by disregarding traditional districting principles such as compactness, contiguity, and respect for political subdivisions.

509 U.S. at ___, 113 S.Ct. at 2826-27 (emphasis added). This case is not the "exceptional" case to which *Shaw* addresses itself. In *Gomillion,* Alabama redefined the boundaries of Tuskegee, Alabama so that the city limits went from being shaped like a square to a strangely irregular twenty-eight sided figure. In the process of reconfiguring the city limits, the Alabama Legislature excluded 98.75% of the four hundred African-American voters from the city of Tuskegee. Segregation aptly describes the actions taken by Alabama in *Gomillion.*

Segregation does not describe the actions taken by the Texas Legislature here.[20] The minority populations in Dallas and Harris County are not dispersed. Rather, they are concentrated in certain portions of each county. *See* Pl. Ex. 34H2, 34H8, 34H9, Joint App. at 150-152. The Legislature drew CDs 18, 29, and 30 to reflect the concentrated locations of these minority populations. They are not an example of the State concentrating dispersed populations.

Moreover, CDs 18, 29, and 30 are the congressional districts in the State that are least dominated by any one racial or ethnic group. CD 18 has a voting age population that is 48.6% African-American, 13.7% Hispanic, and 35.2% Anglo; CD 29 has a voting age population that is 55.4% Hispanic, 9.8% African-American, and 33.4% Anglo; and, CD 30 has a voting age population that is 47.1% African-American, 15.1% Hispanic, and 36.1% Anglo. *See*, Joint App. at 154-60. In fact, the state's expert Dr. Chandler Davidson, noted that CD 30 has the smallest African-American population of any of the seventeen African-American opportunity districts in the South. St. Ex. 17 at 55.

By comparison, CD 6 has a voting age population that is 88.8% Anglo, 4.0% African-American, and 4.9% Hispanic. *See*, Joint App. at 157. CD 6 is not unique. A total of nine districts, CDs 1, 3, 4, 6, 8, 17, 19, 21, and 26, have an Anglo voting age population greater than 80%. *Id.* at 154-60. The trial court ruled that none of these districts was racially gerrymandered.

To conclude that the Legislature "segregated" CDs 18, 29, and 30 trivializes and dilutes a term which historically has been used to describe legislative acts that

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[20] The trial court wrongly concluded that the Texas Legislature segregated the tri-ethnic population of Texas: "Not only did the state know the precise location of African-American, Hispanic, and Anglo populations, but it repeatedly *segregated* those populations by race to further the prospects of incumbent officeholders or to create 'majority-minority' Congressional districts." *Vera*, 861 F.Supp. at 1309 (emphasis added).

resulted in one race dominated districts. The evidence establishes that the Texas Legislature did not segregate CDs 18, 29, and 30.

B. This Court Should Reverse the Judgment of the Court Below and Render Judgment in Favor of the State

The trial court erroneously invoked strict scrutiny. The record clearly establishes that the state used the "customary and traditional districting practices" in drawing CDs 18, 29, and 30 that it has historically used and that it used in drawing all of Texas' thirty congressional districts. Therefore, the state defeated a claim that a district has been gerrymandered on racial lines. This Court should reverse the ruling of the trial court and render judgment for the appellants.

II.
ALTERNATIVELY, IF PLAINTIFFS HAVE SHOWN THAT RACE WAS THE PREDOMINANT FACTOR, CDS 18, 29, AND 30 WERE NARROWLY TAILORED TO FURTHER A COMPELLING STATE INTEREST

A. Texas Had a Compelling State Interest in Drawing CDs 18, 29, and 30

In *Shaw v. Reno, supra*, this Court suggested, without deciding, that compliance with the Voting Rights Act, 42 U.S.C. § 1971, et seq., and the eradication of the effects of past racial discrimination could be state interests that are sufficiently compelling to justify race-conscious redistricting. 509 U.S. at ___, 113 S.Ct. at 2830-31. Last term, in *Miller v. Johnson, supra*, this Court again assumed that such a state interest could be compelling. The issue was not decided in *Miller* because the Court held that even if the interest was compelling in Georgia, the means was not narrowly tailored to

further that interest. *Id.*,___ U.S. at ___, 115 S.Ct. at 2490-91. On remand, the trial court in *Shaw* expressly held that compliance with both the Voting Rights Act and a desire to ameliorate the effects of past discrimination are compelling state interests that can justify race-based redistricting. *Shaw v. Hunt*, 861 F.Supp. 408, 437 (E.D. N.C. 1994).

Like the North Carolina case, this case squarely presents the issue to this Court. Texas intentionally maintained CD 18 as an African-American opportunity district and intentionally created CDs 29 and 30 as minority opportunity districts in order to comply voluntarily with its reasonable belief, based upon strong evidence, that it was required to do so by the Voting Rights Act, and because it desired to insure that minorities who have historically been excluded from the electoral process in Texas had a reasonable opportunity to elect candidates of their choice. Both of these motives are compelling state interests.

To hold otherwise will subject political jurisdictions, like Texas and its thousands of political subdivisions that are covered by the Voting Rights Act, to endless litigation every time they comply, willingly or unwillingly, with the § 5 and § 2 requirements of the Act. Compliance with the Act cannot occur without race consciousness. Unless this Court is willing to hold the Voting Rights Act unconstitutional, a state's interest in compliance must be treated as compelling.

1. Texas Had a Strong Basis in Evidence to Believe that § 5 of the Voting Rights Act Required the Maintenance of CD 18 as an African-American Opportunity District

The Texas Legislature created CD 18 as a minority opportunity district in 1971. It was the only African-American opportunity district of the 24 districts contained in that redistricting plan.[21]

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[21] CD 18 maintains a distinguished place in the history of African-American politics in Texas. In the 1970's round of redistricting, the

In 1975, Texas became a covered jurisdiction under the Voting Rights Act. Section 5 of the Act requires Texas to obtain administrative preclearance from the United States Attorney General or approval from the United States District Court for the District of Columbia of any change involving a "standard, practice, or procedure with respect to voting" made after November 1, 1964. 42 U.S.C. § 1973. This preclearance requirement applies to congressional districting plans. *Beer v. United States*, 425 U.S. 130, 133, 96 S.Ct. 1357, 1360 (1976).

The relevant standard for preclearance under § 5 is a determination that the proposed change does not "have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c. "[T]he purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer, supra*, 425 U.S. at 141, 96 S.Ct. at 1364.

Texas almost certainly would have drawn an objection under § 5 if it had created no African-American opportunity districts in 1991. A drop from one district in twenty-seven (3.7%) to zero districts in thirty (0%) would have been a retrogression, particularly when the African-American population in Texas had remained a relatively constant proportion of the state's population (11.89% in 1980 and

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Legislature intentionally drew the district so that then-State Senator Barbara Jordan could win it. U.S. Ex. 1071 at 10. Ms. Jordan was the first African-American member of the Texas Senate since 1883. She served in the Texas Senate with distinction for several years, and was able to persuade the Legislature to create a minority opportunity congressional district in Houston. After its creation, Ms. Jordan was easily elected as the first African-American member of Congress from Texas since Reconstruction. *Id.* at 10-11. She remained in Congress until her retirement for health reasons in 1978. *Id.* at 23. In 1979, Ms. Jordan was succeeded by Mickey Leland, who represented CD 18 until his untimely death in a plane crash. He, in turn, was succeeded by Craig Washington, and, recently by present Congresswoman Sheila Jackson Lee.

11.63% in 1990). *Vera*, 861 F.Supp. at 1311. Of course, the state did not run this risk because the Texas Legislature understood its obligation to maintain CD 18 as one in which African Americans could elect their candidate of choice. *See*, St. Ex. 15, Joint App. at 251-52.

In *Shaw*, this Court cautioned that a "reapportionment plan would not be narrowly tailored to the goal of avoiding retrogression if the State went beyond what was reasonably necessary to avoid retrogression." *Shaw v. Reno, supra*, 509 U.S. at ___, 113 S.Ct. at 2831. The evidence in this case conclusively shows that Texas did not run afoul of this caution when it redrew CD 18 in 1991.

Upon completion of the 1980's redistricting, CD 18 had an African-American population in the low 40% range and an Hispanic population in the low 30% range. Joint App. at 260. As the 1990 census approached, population projections indicated that much of the African-American population in Houston had migrated out of the center city core of CD 18 into more suburban areas. Thus, by 1990, Houston's African-American population was located in a "Y" radiating out from downtown,[22] and CD 18 no longer had a plurality that was African-American. CD 18's racial makeup before the 1991 redistricting was 35.1% African-American, and 42.2% Hispanic. *Vera*, 861 F.Supp. at 1323. According to the 1990 census, 527,964 African-American persons lived in Harris County. *Vera*, 861 F.Supp. at 1312. In order to maintain CD 18 as an African-American opportunity district, the district's boundaries had to shift.

The coalition between Hispanics and African Americans that existed in the district in the 1970's and early 1980's had begun to break down by the late 1980's. *Vera*, 861 F.Supp. at 1316. Therefore, maintaining CD 18 at its 1990

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[22] Plaintiffs' witness, Dr. Ronald E. Weber, described the locations of African-American concentrations as being at 10:00 o'clock, 1:00 o'clock, and 6:00-7:00 o'clock. Tr. Vol. II at 63-64. *See, also*, Pl. Ex. 34-H8, Joint App. at 151.

ethnic percentages would not continue CD 18 as an African-American opportunity district. Consequently, the Legislature chose to redraw CD 18 with a bare African-American majority of 50.9%.

2. Texas Had a Strong Basis in Evidence to Believe that § 2 of the Voting Rights Act Required the Creation of Minority Opportunity Districts in Dallas and Houston and the Maintenance of CD 18 in Houston

Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, required the creation of an Hispanic opportunity district in Houston and the continuation of a Houston African-American opportunity district.[23] The presence of Harris County's large Hispanic and African-American populations alone, of course, does not create an obligation to create opportunity districts for these populations. Rather, § 2 requires the creation of such a district when three preconditions are present: (1) the minority population is sufficiently numerous and sufficiently compact that it can form the majority of a district, (2) the minority population is politically cohesive, and (3) the white majority votes sufficiently as a bloc to enable it usually to defeat the minority community's candidate of choice, *Thornburg v. Gingles*, 478 U.S. 30, 50-51, 106 S.Ct. 2752, 2766 (1986); *Growe v. Emison*, 507 U.S. ___, ___, 113 S.Ct. 1075, 1084 (1993), and under the totality of the circumstances a failure to create such a district would result in the dilution of the minority community's vote.

Both the Hispanic and African-American communities in Houston easily satisfied the first prong of the *Gingles* test. Each was numerous enough to form a majority in a compact congressional district. *See*, St. Ex. 12A and 12B, Joint App. at 197-200. In fact, highly compact districts were proposed for

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[23] This § 2 obligation is separate from and analytically distinct from any obligation under § 5.

each population during the legislative process. Each of the proposals was rejected for political reasons, and the districts actually adopted by the Legislature were more irregular and less compact. However, *Gingles* does not require a § 2 plaintiff to meet some "aesthetic ideal of compactness." *Clark v. Calhoun County, Mississippi*, 21 F.3d 92, 95 (5th Cir. 1994). *Gingles* only requires such a plaintiff to show that a compact district *could be drawn*. *Id.* *See, also, Houston v. Lafayette County, Mississippi*, 56 F.3d 606, 611 (5th Cir. 1995). Once a § 2 plaintiff establishes the existence of a § 2 violation, the governmental entity must be given the first opportunity to develop a remedial plan. *Id.* A remedial district that is oddly shaped or that has ragged edges does not show a failure to meet the first *Gingles* precondition. *Id.*

Thus, the demonstration to the Legislature that compact districts in which both the African-American and Hispanic populations in Houston could constitute a majority was sufficient evidence upon which the Legislature could, and should, act. The remedial districts actually adopted by the Legislature have no relevance to the question of whether potential § 2 plaintiffs in Houston would be able to meet the first *Gingles* precondition.

The evidence available to the Legislature indicated that the second and third *Gingles* preconditions could also be shown by these two minority communities in Houston. Each community was politically cohesive, and the evidence continued to show the presence of racially polarized voting in the Houston area such that the white majority continued to vote sufficiently as a bloc that it could usually defeat the minority candidate of choice. *Vera*, 861 F.Supp. at 1316. *See, also,* St. Ex. 15, Joint App. at 251-53.

Thus, the Legislature had a strong basis in evidence to believe that under the *Gingles* test, it was obligated to create an Hispanic minority opportunity district in Houston and obligated to maintain an African-American opportunity district. How it would carry out that obligation was the political question appropriately left to the Legislature.

During the 1960's, the Hispanic and African-American populations in Houston had built coalitions between themselves to have an impact on the local political scene. Beginning in the mid 1980's this coalition began to break down. Several city council election contests saw these two communities backing different candidates and allying themselves with Anglo voters to defeat the candidate of choice of the other minority community. This trend culminated in a bitterly contested mayoral race in which Hispanic voters successfully allied with Anglo voters to elect Anglo Bob Lanier over African-American State Rep. Sylvester Turner. *Vera*, 861 F.Supp. at 1316. *See, also,* Joint App. at 251. Thus, two highly compact districts, each of which contained approximately equal numbers of Hispanic and African-American residents, were out of the question. *Id.*

Because of this fracturing of the former coalition between the two minority communities, the creation of an Hispanic opportunity district while simultaneously maintaining CD 18 as an opportunity district for African Americans became a more difficult task. But for the political tensions between two strong aspirants for this seat and the lack of coalitions between Hispanic and African-American voters, two relatively compact and regularly shaped districts could have been drawn to give the combined Hispanic and African-American communities in Houston the opportunity to elect candidates of their choice. The interlocking location of the two populations and the breakdown of the coalition meant that one district had to wrap around the other in order to draw an Hispanic opportunity district and simultaneously maintain the African-American opportunity district. The Legislature appropriately chose to accommodate all of these competing interests.

In Dallas, during the 1980's round of redistricting, promises had been made to the African-American community in Dallas that it would receive an opportunity district. Those promises were not fulfilled. U.S. Ex. 1071 at 15-22. Instead, the African-American population of Dallas County was split

between CDs 5 and 24. By 1990 the census figures showed that the African-American population of Dallas County was 362,130, clearly more than enough to constitute a majority of a congressional district. *Vera*, 861 F.Supp. at 1312. A compact district containing this population could easily be drawn and was actually proposed.[24] *See* Pl. Ex. 29A, Joint App. at 139. *See, also,* St. Ex. 12C, Joint App. at 201. In addition, the other two *Gingles* preconditions were present. This population was politically cohesive, and racially polarized voting continued to exist in the Dallas area. In fact, just as the redistricting process began, the trial court's decision in *Williams v. City of Dallas*, 734 F.Supp. 1317, 1393 (N.D. Tex. 1990) concluded that "it is clear that there is white bloc voting in Dallas which usually defeats the preferred choice of African-Americans." In light of this contemporaneous finding by that court, testimony presented to the Legislature in public hearings, *see,* U.S. Ex. 1086(l), and other information of which the Legislature was aware, little debate about the necessity for the creation of such an opportunity district in the Dallas area occurred.[25] The debate over CD 30 concerned how to comply with the state's § 2 obligation while simultaneously protecting the affected incumbents. Through a series of political compromises, the Legislature found a way to do both.

The Plaintiffs' witnesses did not dispute the conclusions of the Legislature concerning the need to maintain CD 18 and simultaneously create additional minority opportunity districts in Dallas and Houston. Rep. Grusendorf testified at trial:

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[24] Of course, the ultimate shape of the district is not this compact shape. The dynamics that lead to the district's final shape are discussed in some detail, *supra.*

[25] The trial court noted that the agreement to create an African-American opportunity district in Dallas traversed party lines. *Vera*, 861 F.Supp. at 1315, n. 12.

Q. I believe you testified also that you had no problem with the creation of a Black district in the Dallas County area; is that correct?
A. In fact, I think I told you I really thought in 1982 we should have drawn a Black district in Dallas County.
Q. It was long overdue?
A. That's correct. That was not the problem. The problem in congressional redistricting was not on the Black district, but it was, like I said earlier, the feeding frenzy of white Democrats not want go to [sic] give up those Blacks.

* * *

Q. You also, I think, testified in your deposition--and tell me if you have changed your views on this--that you also thought it was appropriate to create an additional Hispanic district. You had no problems creating an additional Hispanic district in Harris County?
A. That's correct.
Q. And in South Texas?
A. That's correct.

* * *

Q. Was it your view that the Voting Rights Acts [sic] required such an approach?
A. Yes. My view was that the Voting Rights Act required that when possible we draw minority districts.
Q. You found it possible in all three of those area?
A. Yes.

> Q. Including, in general, the areas--I am not saying the precise districts, but in general the areas now encompassed by District 30, District 28 and District 29? I am not saying the shape of the districts as they are, but in general, the areas?
> A. In general.
> Q. So, it's your view there is sufficiently compact aggregation of minority voters of Hispanics in the two Hispanic districts, Blacks in the district in Dallas, to draw those kind of districts so that minority voters have an opportunity to elect the candidate of their choice?
> A. I think you can draw minority districts that are much more compact where minorities can elect their own representative, yes.
> Q. And the need to do this derives, as you have indicated, in part from the Voting Rights Act?
> A. I think I told you Friday that I thought that the Voting Rights Act required it, and I also think fairness would require it.

Tr. Vol. I at 99-101. [26] Thus, all parties agree that those districts were required. The dispute is over their shapes.

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[26] The third new minority opportunity district created by the Legislature was in the San Antonio and South Texas area. This district was intentionally created to give Hispanic voters further opportunities to elect the candidates of their choice. Again, there was virtually no debate in the Legislature about the goal of creating this district. Unlike the new districts allocated to Houston and Dallas, the lines for the new San Antonio-South Texas district were settled without difficulty. U.S. Ex. 1071 at 50-51. Although the Plaintiffs also challenged CD 28, the trial court rejected the challenge. The trial court found that the district was "a designedly Hispanic district," found that then-Senator Frank Tejeda "influenced the drawing of district lines so that as much of his Bexar County constituency as possible would fall within the district," and found that the district had

In light of the evidence in the record, the trial court's statement that, "It is not obvious to this court that the State *justifiably* feared potential liability under § 2 or § 5 of the Voting Rights Act if it failed to protect District 18 and set aside three new districts--Districts 28, 29 and 30--for minority Congressmen," *Vera*, 861 F.Supp. at 1343-44 (emphasis in original)(footnote omitted), is mystifying. In a footnote (n. 54 at 1343-44), the trial court attempted to explain this enigmatic statement. The court's reasoning has two important flaws.

First, it assumes that a potential § 2 plaintiff in Houston or Dallas would have to show a court that the districts actually adopted by the Legislature were "compact" within the meaning of *Gingles*. As discussed above, the Fifth Circuit Court of Appeals has squarely held that this assumption is incorrect. *Houston v. Lafayette County, Mississippi, supra; Clark v. Calhoun County, Mississippi, supra.* Rather, *Gingles* only requires that a minority population be sufficiently compact that a district *could be drawn*. As the trial court properly noted, the evidence in this case shows clearly that highly compact minority opportunity districts could be drawn in both Dallas and Houston. *Vera*, 861 F.Supp. at 1343. That the Legislature chose to draw less compact districts does not change the nature of the proof that would be required of potential § 2 plaintiffs.

Second, the trial court notes that a court hearing a § 2 case cannot presume the existence of racially polarized and bloc voting. Rather, a plaintiff in such a case must prove that such voting exists. In light of the evidence known to the Legislature, discussed above, and confirmed at trial by the state's witness, Alan Lichtman, Tr. Vol. IV at 186-90, and others, it is clear that a § 2 plaintiff likely would have been able to meet this *Gingles* requirement as well.

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fingers that jutted into the small cities of Seguin and New Braunfels in order to "excise[] the minority, largely Hispanic populations from those cities," but held that this district was not a racial gerrymander. *Vera*, 861 F.Supp. at 1344.

Thus, far from being merely a "ritualistic invocation of § 2," *Vera*, 861 F.Supp. at 1343, n. 54, the state had good reason, based on substantial evidence in this record, to believe that the Voting Rights Act required the creation of minority opportunity districts in Dallas and Houston. The Legislature then appropriately fit these districts into the same political process that it applied to all other districts in the state.

3. The State Need Not Wait to be Sued

In *South Carolina v. Katzenbach*, 383 U.S. 301, 86 S.Ct. 803 (1966), this Court upheld the constitutionality of the preclearance requirement of § 5 of the Voting Rights Act. The court characterized § 5 as a necessary and constitutional response to some states' "extraordinary stratagem[s] of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees." *Id.*, 383 U.S. at 335, 86 S.Ct. at 822 (footnote omitted). Section 2 of the Act has a related purpose of insuring that minority voters are not prevented from effectively participating in the electoral process. *See, Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752 (1986).

The *Shaw* court on remand noted that this Court

> . . . has recognized consistently that the Voting Rights Act is the single most important piece of federal anti-discrimination legislation ever passed by Congress--enacted, and then twice extended, with the avowed purpose of putting a stop to nearly a century of "'unremitting and ingenious defiance' of the commands of the Fifteenth Amendment" by the states and "'banish[ing] the blight of racial discrimination in voting' once and for all." *McCain v. Lybrand*, 465 U.S. 236, 244, 104 S.Ct. 1037, 1043, 79 L.Ed.2d 271 (1984) (*quoting South*

Carolina v. Katzenbach, 383 U.S. 301, 308-09, 86 S.Ct. 803, 808-09, 15 L.Ed.2d 769 (1966).

Shaw v. Hunt, supra, 861 F.Supp. at 438.

In light of the importance of this legislation, voluntary compliance by the states must be encouraged. Indeed, Justice O'Connor has noted that this Court's "recognition of the responsible state actor's competency to take [steps toward voluntary compliance with anti-discrimination laws] is assumed in our recognition of the States' constitutional *duty* to take affirmative steps to eliminate the continuing effects of past unconstitutional discrimination." *Wygant v. Jackson Board of Education*, 476 U.S. 267, 291, 106 S.Ct. 1842, 1856 (1986)(O'Connor, J. concurring)(emphasis in original).

In this case, the trial court noted that "Texas has a long, well-documented history of discrimination that has touched upon the rights of African-Americans and Hispanics to register, to vote, or to participate otherwise in the electoral process. Devices such as the poll tax, an all-white primary system, and restrictive voter registration time periods are an unfortunate part of this State's minority voting rights history." *Vera*, 861 F.Supp. at 1317. Moreover, the Department of Justice "has frequently interposed objections against the State and its subdivisions." *Id.* In light of this history, Texas should be commended, rather than censured, for its attempt to ameliorate the effects of its past in voluntarily undertaking to insure that its minority citizens have an equal opportunity to participate in the electoral process.

B. Texas Narrowly Tailored These Districts to Further Its Compelling State Interest

The trial court erred in concluding that a minority opportunity district could not be narrowly tailored unless it was configured in the most compact manner. The trial court held that the state had failed to show that CDs 18, 29, and 30 were narrowly tailored because the evidence showed that more

compact districts could have been drawn in Dallas and Houston. However, the trial court's reasoning has two fundamental and fatal flaws.

First, the court's conclusion is a misreading of *Shaw v. Reno*. In discussing "traditional districting principles such as compactness, contiguity, and respect for political subdivisions," 509 U.S. at ___, 113 S.Ct. at 2827, the Court stated:

> We emphasize that these criteria are important not because they are constitutionally required--they are not, . . . but because they are objective factors that may serve to defeat a claim that a district has been gerrymandered on racial lines.

Id. The trial court's conclusion ignores this caution and elevates compact shape from a constitutionally permissible consideration to a constitutional requirement.

Second, the trial court's conclusion that more compact minority districts could have been drawn is true only if one ignores Texas' traditional districting principles. That is, more compact minority opportunity districts could have been drawn only if the state gave predominant (or indeed, even exclusive) consideration to the ethnic make-up of the districts, and ignored the political give and take that applied to every other district in the state.[27]

The proper legal standard for narrow tailoring in the context of minority opportunity voting districts drawn in part to comply voluntarily with the Voting Rights Act was enunciated by the trial court on remand in *Shaw v. Hunt*, 861 F.Supp. 408 (E.D. N.C. 1994). That court held that narrow tailoring in this context means that the state drew no more

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[27] The uncontradicted evidence showed that alternate plans with more compact minority opportunity districts would have paired incumbents and would have changed the partisan alignment of the state's congressional delegation. *See*, Joint App. at 208-21.

minority opportunity districts than were reasonably required by the Voting Rights Act and placed no more minority voters within those districts than was reasonably necessary to give the group a reasonable opportunity to elect candidates of their choice. The purpose of the Act is to insure that all voters are able to participate equally in the electoral process. Requiring minority opportunity districts to be regularly shaped and compact does little to further that purpose, particularly when the undisputed evidence is that Texas places little value upon shape and compactness in its election districts.

The evidence at trial conclusively shows that the three districts invalidated by the trial court were narrowly tailored to further the state's compelling interest in complying with the Voting Rights Act. The state created no more minority opportunity districts than were required by the Act, designed them with no greater concentration of minority voters than was necessary to give those voters a reasonable opportunity to elect candidates of their choice, and otherwise subjected those districts to the same criteria and political process that all other districts in the state underwent.

1. Districts Were Drawn to Provide a Reasonable Opportunity to Elect Candidates of Choice

All three of these districts are competitive districts, i.e. they do not guarantee to any ethnic group the ability to elect candidates of choice. Rather, they provide a reasonable opportunity to do so, provided the dominant ethnic group organizes, registers its voters, and turns them out on election day.

CD 18 in Houston and CD 30 in Dallas have bare population majorities that are African-American (50.9% and 50.0%, respectively), and African Americans do not constitute a majority of their voting age populations (48.6% and 47.1%, respectively). Pl. Ex. 34-O, Joint App. at 154-60. So long as polarized voting continues to occur, and in light of the demographics of the district, African-Americans have an

incentive to seek out support from other racial and political groups. Thus, the districts offer opportunity, but do not guarantee electoral success. That, and nothing more, is what the Voting Rights Act requires; that, and nothing more, is what the Legislature provided when it drew these districts.

CD 29 in Houston has a population majority that is Hispanic (60.6%), but its voting age population is 55.4% Hispanic, Pl. Ex. 34-O, Joint App. at 160, and its voter registration rate is just 26.3% Hispanic. U.S. Ex. 1071 at 49. This radical fall-off in registration rates is in part attributable to the presence of non-citizen Hispanics in the district and in part to a lower voter registration rate for Hispanics. In any event, it cannot be said that the Legislature concentrated more Hispanics in CD 29 than was reasonably necessary to give them an opportunity to elect their candidate of choice. Indeed, although they are the largest single ethnic group in the district, Hispanics have been unable to elect their candidate of choice in the last two vigorously contested congressional elections. Rather, in those elections the candidate of choice for Hispanics has been twice narrowly defeated by an Anglo who was not the candidate of choice.[28]

2. The State Drew No More Districts Than Were Reasonably Necessary

Unlike Georgia in *Miller v. Johnson, supra,* Texas did not set out to maximize minority voting strength. Indeed, the

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[28] The State Defendants do not in any way mean to suggest that an Anglo candidate cannot be the candidate of choice for a minority community. Indeed, CD 16, a majority Hispanic district in El Paso, has been represented for a number of years by its candidate of choice, Ron Coleman, who is Anglo. Tr. Vol. II at 117-18. Rather, the evidence in this case simply shows that in the last two congressional elections in CD 29, the successful Anglo candidate, Gene Green, was not the candidate of choice for Hispanic voters. Tr. Vol. II at 118. Over time, that situation might well change as the voters of the district continue to be represented by Congressman Green.

Legislature rejected several alternative plans that created more minority opportunity districts than the plan ultimately enacted. Instead of trying to maximize the number of such districts, whether one considers the population of the state as a whole or separately considers the populations in the Houston and Dallas areas, it is clear that the Texas Legislature has created no more minority opportunity districts than were required by the Voting Rights Act.

The 1990 census indicates that the state as a whole had a population of 16,986,510. *Vera*, 861 F.Supp. at 1311. Of this total, 11.63% was African-American and 22.55% was Hispanic. *Id.* Of the thirty congressional districts, two (18 and 30) are opportunity districts for African-Americans and seven (15, 16, 20, 23, 27, 28, and 29) are opportunity districts for Hispanics. Thus, approximately 6.7% of Texas' congressional districts were drawn to give African Americans the opportunity to elect their candidates of choice, and 23.3% were drawn to give Hispanics the same opportunity.[29] On a statewide basis, the state's African-American population is underrepresented and the state's Hispanic population is approximately proportionately represented.[30]

If the appropriate focus of inquiry is upon the two metropolitan areas, the picture is the same. Harris County's total 1990 population was 2,818,199, of which 644,935 was Hispanic (22.9%) and 527,964 was African-American (18.7%). *Vera*, 861 F.Supp. at 1312. The total population of Harris County would entitle it to 4.977 congressional districts. 4.977 districts times 22.9% equates to 1.14 districts. 4.977 districts times 18.7% equates to .93 districts. Therefore,

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[29] In fact, two of these districts, CD 16 in El Paso and CD 29 in Houston, have elected Anglos to serve as their Congressmen.

[30] Of course, the presence or absence of proportionality is but one factor to be considered as part of the totality of the circumstances when determining whether members of a minority group have less opportunity than other members of the electorate to participate in the political process. *Johnson v. De Grandy*, ___ U.S. ___, 114 S.Ct. 2647 (1994).

looking only at Harris County, the Hispanic population is slightly underrepresented, and the African-American population is slightly overrepresented.

The current plan simply does not attempt to create more minority opportunity districts than the minority population in the Houston area would justify. In fact, during the legislative process, the Legislature rejected alternative plans that would have created a second African-American opportunity district in the Houston area. *See,* St. Ex. 15, Joint App. at 253 and St. Ex. 25, Joint App. at 304-33. These plans, proposed by State Reps. Ron Wilson and Jerald Larry, linked African-American populations south of Houston with African-American populations in other coastal communities and in East Texas. Each of the proposed districts meandered over hundreds of miles. *Id.* The Legislature rejected both plans out of hand. *Id.* Instead, the Legislature simply maintained the single African-American opportunity district that is entirely in Harris County.

The Dallas area presents a similar picture. The total 1990 population of Dallas County was 1,852,810, of which 362,130 was African-American (19.54%). *Vera,* 861 F.Supp. at 1312. The total population of Dallas County would entitle it to 3.27 congressional districts. 3.27 districts times 19.54% equates to .639 districts.

Here, too, the current plan does not attempt to create more minority opportunity districts than the population might reasonably justify. Here, too, an alternative plan proposing the creation of an additional opportunity district was presented to the Legislature. State Sen. Teel Bivins presented a plan that would have created a combined African-American and Hispanic opportunity district in Tarrant County, thus creating ten minority opportunity districts overall in the state. *See*, U.S. Ex. 1092, Senate Committee of the Whole, 8/24/91 at 3-13. According to its author, the plan was explicitly designed with one objective: "to maximize minority voting strengths." *Id.* at 4. By a vote of 20-10 the Senate rejected the Bivins plan.

Thus, the evidence conclusively shows that Texas did not create, or even seriously consider creating, more minority opportunity districts than were reasonably required under the Voting Rights Act to insure that minority voters had an equal opportunity to participate in the electoral process. Moreover, Texas did not create districts that would guarantee minority electoral success, but rather provided competitive opportunity districts for minority voters.

3. The State Gave No More Consideration to Race Than Was Reasonably Necessary to Achieve the Goal

This Court has recently stated that "minority voters are not immune from the obligation to pull, haul, and trade to find common political ground, the virtue of which is not to be slighted in applying a statute meant to hasten the waning of racism in American politics." *Johnson v. De Grandy*, ___ U.S. ___, ___, 114 S.Ct. 2647, 2661 (1994).

The overwhelming evidence in this case is that the protection of incumbents was the overriding concern of the Legislature. Repeatedly during the legislative debates this point was emphasized and criticized. Like every other affected group, minority groups in Texas worked within this framework. Although the Legislature set the goals of maintaining CD 18 as an opportunity district for African Americans in Houston and creating new opportunity districts for Hispanics in Houston and South Texas and for African Americans in Dallas, the ultimate shapes of these districts were molded by the same highly charged political process that molded the shape of every other district in the state. Thus, rather than being treated as sacrosanct and insular, minority voters in Texas were required to make the same political compromises and accommodations that every other affected group had to make, and the districts intended to give minority voters an opportunity to elect candidates of their choice are the result of this process.

Thus, although race-consciousness played a role in the setting of the goals for these three minority opportunity districts, the actual implementation of those goals was subject to the same districting considerations that drove the creation of every other district in the state. The state, therefore, gave no greater consideration to race than was necessary to achieve the goal of insuring that minority voters in these communities are able to participate equally in the electoral process.

4. The State Must be Able to Consider Its Usual Race-Neutral Districting Objectives

This Court has repeatedly acknowledged the political nature of redistricting decisions. In *Gaffney v. Cummings*, 412 U.S. 735, 753, 93 S.Ct. 2321, 2331-32 (1973), this Court described the redistricting process:

> Politics and political considerations are inseparable from districting and apportionment . . . . [I]t requires no special genius to recognize the political consequences of drawing a district line along one street rather than another. It is not only obvious, but absolutely unavoidable, that the location and shape of districts may well determine the political complexion of the area. District lines are rarely neutral phenomena. They can well determine what district will be predominantly Democratic or predominantly Republican, or make a close race likely. Redistricting may pit incumbents against one another or make very difficult the election of the most experienced legislator. The reality is that districting inevitably has and is intended to have substantial political consequences.

In *Gaffney,* the plaintiffs attacked the plan because the shapes of districts were "indecent" and because the redistricting board had attempted to "wiggle and joggle" boundary lines to ferret out pockets of each party's strength. *Id.*, 412 U.S. at 752, n. 18, 93 S.Ct. at 2331. In response, this Court said that "compactness or attractiveness has never been held to constitute an independent federal constitutional requirement for state legislative districts." *Id.* The Court held that a plan that intentionally drew districts to roughly approximate the relative strength of the major political parties did not violate the Constitution's Equal Protection Clause.

The Court had these further cautionary words concerning court intrusion into the redistricting process: "[W]e have not ventured far or attempted the impossible task of extirpating politics from what are the essentially political processes of the sovereign States." *Id.*, 412 U.S. at 754, 93 S.Ct. at 2332.

In *White v. Weiser, supra,* decided the same day as *Gaffney*, the issue was whether the trial court could properly disregard Texas' explicit policy choice to protect incumbents when choosing a plan to remedy a one-person, one-vote violation. The Court held that the trial court was obligated to honor that choice when it was possible to do so and still remedy the violation. The Court again cautioned the lower federal courts about disregarding a legislature's political choices:

> As we have often noted, reapportionment is a complicated process. Districting inevitably has sharp political impact and inevitably political decisions must be made by those charged with the task. . . . Here those decisions were made by the legislature in pursuit of what were deemed important state interests. Its decisions should not be unnecessarily put aside. . . .

Id., 412 U.S. at 795-96, 93 S.Ct. at 2355.

The trial court's decision in this case puts aside the political choices made by the Legislature as manifested by its redistricting practices and replaces them with the court's own ideal of what redistricting practices the Legislature should pursue (compactness, contiguity, and respect for political subdivisions). It ignores the traditional and customary redistricting practices of the Texas Legislature and forces the state to ignore the political consequences of its redistricting decisions when creating minority opportunity districts in the state's largest urban areas. Indeed, the trial court's decision prohibits the state from considering factors which the state has historically deemed important, and which the evidence shows, have driven the decisions concerning the shapes of the other non-minority districts in the state.

The trial court's decision has other consequences as well. It holds that minority opportunity districts drawn to comply with the Voting Rights Act "must have the least possible amount of irregularity in shape, making allowances for traditional redistricting criteria." *Vera*, 861 F.Supp. at 1343. Of course, as *Gaffney* succinctly holds, neither compactness nor attractiveness are constitutional requirements. Thus, the trial court's decision imposes a wholly different standard upon CDs 18, 29, and 30 than would apply to the state's twenty-seven other congressional districts.[31]

The trial court's decision also has other disturbing implications. Implicitly it says that Anglo officeholders may not fight to keep minority voters in their districts if the consequence of such a fight is to make districts irregularly shaped. It says that minority voters may not attempt to retain officeholders who have been favorable to them if the result is irregularly shaped districts. And it says that a state may not require minority officeholders and residents to "pull, haul and

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[31] The trial court explicitly found that other Anglo majority districts throughout the state were irregularly shaped (in the trial court's words, "disfigured"), *Vera*, 861 F.Supp. at 1309, but held that these districts were not unconstitutional.

trade" in the political arena like other affected citizens. Rather, the trial court's decision in effect says that race must override all of these political considerations, except for the "traditional districting practices" that the court favors, and the only permissible result is a district that has the least possible amount of irregularity in shape. *Shaw v. Reno* and *Miller v. Johnson* do not mandate such a result. This Court should reverse the judgment of the trial court and render a judgment in favor of the State of Texas.

III.
THE APPELLEES DO NOT HAVE STANDING

Shaw v. Reno, supra, recognized that a racial gerrymander constitutes a racial classification and, therefore, may violate the Equal Protection Clause of the Fourteenth Amendment if not narrowly tailored to further a compelling state interest. Racial classifications generally "threaten to stigmatize individuals by reason of their membership in a racial group and to incite racial hostility." 509 U.S. at ___, 113 S. Ct. at 2824.

This Court in *United States v. Hays*, ___ U.S. ___, ___, 115 S.Ct. 2431, 2436 (1995), held that "any citizen able to demonstrate that he or she, personally, has been injured by that kind of racial classification [a racial gerrymander] has standing to challenge the classification in federal court." Racial gerrymandering can result in "representational harms." *Id.* Representational harm occurs when officials elected from a racially gerrymandered district that is "created solely to effectuate the perceived common interests of one racial group . . . are more likely to believe that their primary obligation is to represent only the members of that group, rather than their constituency as a whole." *Shaw v. Reno, supra,* 509 U.S. at ___, 113 S. Ct. at 2827.

Thus, to have standing to bring a claim of racial gerrymandering a plaintiff must show that he resides in the

racially gerrymandered district and that he has suffered "representational harm."

Hays teaches that if a plaintiff fails to prove that he resides in an allegedly racially gerrymandered district, then he presumptively has no standing because he has not been the subject of a racial classification and, therefore, has not suffered the special representational harms defined in *Shaw*, absent evidence to the contrary.

Moreover, if a plaintiff proves that he resides in an allegedly racially gerrymandered district, then *Hays* requires proof of representational harm in order to establish standing.[32] This result follows for three reasons.

First, without proof of representational harm, all persons residing in an allegedly racially gerrymandered district would have standing. In this case, since there are three districts at issue, each with a population of 566,217 people, a total of 1,698,651 people would have standing to sue. This result renders meaningless the concrete injury requirement of the standing doctrine. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 572, 112 S.Ct. 2130, 2143 (1992). A plaintiff must, therefore, offer proof of representational harm in order to establish standing, otherwise the injury complained of will not be "concrete and particularized" and "actual and imminent", *Id.*, 504 U.S. at ___, 112 S.Ct. at 2138, but would, in reality, be nothing more than a general grievance about government claiming harm to his interest and the interest of every citizen in the district.

Second, without proof of representational harm, residents of the district who simply disagree with the party affiliation and philosophy of the elected representative would be able to press their legally uncognizable cause of action by dressing it up as a racial gerrymander.

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[32] In *Miller v. Johnson*, *supra*, this Court noted that the plaintiffs had standing because they resided within the challenged district. To the extent that *Miller* stands for the proposition that mere proof of residency in the challenged districts establishes standing, then Texas requests that this Court reconsider that ruling.

Third, without proof of representational harm, courts would be forced to presume that an official elected from the district only represents the members of one racial group instead of the entire constituency in the district regardless of whether the facts show otherwise.

Here, there are six Plaintiffs: Vera, Thomas, Orcutt, Blum, Powers, and Chen. Chen does not reside in any of the districts at issue in this appeal; he resides in CD 25, Deposition of Ed Chen at 21-22, which the court below determined was not racially gerrymandered, and the record lacks evidence substantiating that he was the subject of a racial classification. Thus, he has no standing to complain about CDs 18, 29, and 30. *U. S. v. Hays*, *supra*.

Although the record shows that the remaining five Plaintiffs live in one of the three districts found by the trial court to be racial gerrymanders, it does not show the special representational harm that a racial gerrymander causes.

Blum and Powers reside in CD 18. Congresswoman Sheila Jackson Lee, an African-American female, represents CD 18. Powers said nothing about representational harm. His proffered testimony failed to show that Congresswoman Lee represents only the interests of the African Americans living in CD 18. Similarly, Blum said nothing about experiencing representational harm. Thus, they have failed to adduce evidence proving their standing in this matter.

Orcutt resides in CD 30. Congresswoman Eddie Bernice Johnson, an African-American female, represents the district. Orcutt complained that Rep. Johnson does not represent her because Johnson is an "ultraliberal"; Deposition of Pauline Orcutt at 22-23, and because Johnson supports President Clinton and does not have "conservative attitudes." *Id.* at 24. Orcutt stressed that Johnson's race is not the reason why some in the district feel disenfranchised. *Id.* at 26. In fact, Orcutt said that the reason she is not being adequately represented is that she is a Republican living in a Democratic district. *Id.* at 84-85. She, too, failed to show any representational harm.

Finally, Thomas and Vera reside in CD 29. Congressman Gene Green, an Anglo male, represents the district. Vera, who is an Hispanic male, made no reference in his testimony about representational harm. Thomas testified that Rep. Green was not an adequate representative because "he's a Democrat." Deposition of Barbara Thomas at 47. Moreover, she testified that either a Black or an Hispanic could represent her interests, but not a Democrat, *Id.* at 64. Finally, she testified that in her opinion CD 29 was an Anglo district, *id.* at 61-62, and that her concern about the use of race in redistricting was a theoretical one, *id.* at 69-70, because she did not feel discriminated against, *id.* at 70, and was not segregated. *Id.* at 71. In short, the record lacks any evidence that Rep. Green represents only the Hispanics in the district. Quite the contrary, Green won his congressional seat in this Hispanic opportunity district because of the overwhelming Anglo vote he received coupled with enough of the African-American vote to overcome his Hispanic challenger in the primary. Thus, the record evidence fails to establish standing for Vera and Thomas.

Since the record fails to show representational harm for any of the Plaintiffs, they have failed to show that they have standing to challenge any of the districts invalidated by the trial court. For this independent reason, the trial court's decision should be reversed.

IV.
CONCLUSION

For the reasons set out above, the State Defendants request that this Court reverse the decision of the trial court and render judgment that the Plaintiffs take nothing. In the alternative, the State Defendants request that this Court direct the trial court to dismiss the Plaintiffs' claim for lack of standing.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

GEORGE W. BUSH, Governor of Texas, *et al.*,
Appellants,
vs.
AL VERA, *et al.*,
Appellees.

REV. WILLIAM LAWSON *et al.*,
Appellants,
and
ROBERT REYES, *et al.*,
Appellants,
vs.
AL VERA, *et al.*,
Appellees.

UNITED STATES OF AMERICA,
Appellants,
vs.
AL VERA, *et al.*,
Appellees.

On Appeal from the United States District Court for the Southern District of Texas

BRIEF FOR APPELLEES

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QUESTIONS PRESENTED

When redistricting in 1991, Texas had the ability to ensure minorities full, fair, and equal participation in the political process and the opportunity to elect their candidates of choice by drawing compact districts consistent with Texas political tradition and with the Constitution. Instead, Texas chose to give paramount weight to creating three "safe" single-race majority-minority districts and subordinated traditional districting principles to that objective. The questions presented are:

1. Whether voters living in, or in districts adjacent to, bizarrely shaped, single-race majority-minority districts who have consequently suffered serious representational and other harms have standing to challenge the constitutionality of such districts?

2. Whether the lower court was clearly erroneous in determining that the direct and circumstantial evidence established that Texas was predominantly motivated by racial considerations in formulating Congressional Districts ("CDs") 18, 29, and 30, and their contiguous districts, thus triggering strict scrutiny?

3. Whether Texas can overcome a determination of predominant racial motivation by showing that the final shapes of the districts at issue also were influenced by political gerrymandering that affected the contours of, but did not imperil the preordained racial character of, the districts?

4. Whether Texas had a compelling state interest to engage in race-based districting, particularly where there has been no showing that the lines drawn for CDs 18, 29, and 30 were required by the Voting Rights Act or were otherwise necessary to remedy past racial discrimination?

5. Whether Texas employed narrowly tailored means when it racially gerrymandered CDs 18, 29, and 30 by splitting hundreds of precincts, grossly departing from traditional districting principles, and rejecting many more compact, less bizarre alternatives?

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BRIEF ON THE MERITS

OPINION BELOW

Appellees respectfully urge that the Court affirm the judgment below invalidating portions of Texas House Bill 1 [hereinafter HB 1], 72nd Tex. Leg., 2d C.S. (Aug. 29, 1991). A unanimous three-judge panel found that Texas unconstitutionally separated voters by race in creating Congressional Districts ("CDs") 18, 29, and 30. *See Vera v. Richards*, 861 F. Supp. 1304 (S.D. Tex. 1994).

STATEMENT OF THE CASE

Texas was apportioned three additional congressional districts as a result of the substantial increase in Texas's population between 1980 and 1990. From the outset, as Texas later reported to the Justice Department, "it was agreed that the new districts should be configured in such a way as to allow members of racial, ethnic, and language minorities to elect Congressional representatives." *Narrative of Voting Rights Act Considerations in Affected Districts* (Sept. 1991) Pl. Ex. 4C, J.A. 104 [hereinafter *Narrative*]. Any proposal that did not meet this *a priori* goal was discarded:

> There were many alternative proposals presented. Although some of these proposals showed a more compact configuration, none of them reached the threshold 50% total [minority] population . . . .

Id., J.A. 106. To accomplish this objective, Texas "tortuously constructed [CDs 18, 29, and 30] block-by-block and from one side of the street to another across entire counties to satisfy the desired racial goal." *Vera*, 861 F. Supp. at 1345.

While incumbents may have had a chance to influence some of the district boundaries, their interests were always subordinated to the primary goal of "providing 'safe' seats in Congress for two African-American [representatives] and an Hispanic representative[]." *Id.* at 1309. Removing minority voters from one of the proposed minority districts was allowed only if minorities from other districts who were more likely to vote were "captured" to

preserve the racial character of the single-race majority district. The result was three districts created in "utter disregard for traditional redistricting criteria and [whose] shapes are ultimately unexplainable on grounds other than the racial quotas"; these districts are unquestionably "the product of unconstitutional racial gerrymandering." *Id.* at 1341.

A. BACKGROUND OF PLAINTIFFS' CHALLENGE TO TEXAS'S CONGRESSIONAL REDISTRICTING PLAN

"In assessing the redistricting plans adopted by the Texas legislature in 1991, it is important to take note of the political climate in which those plans were adopted." *Minority Voting Rights Analysis for the Texas House of Representatives 1991 Redistricting Plan* 1 (July - Sept. 1991) ("*Minority Analysis*").[1] Texas today is a multi-ethnic community. In 1980, Texas's total population was 14,229,191. Approximately 20.98% of that population was Hispanic, 11.89% was non-Hispanic African-American, and 65.7% was Anglo. By the 1990 Census, Texas's total population had increased to 16,986,510, with approximately 22.55% Hispanic, 11.63% non-Hispanic African-American, and 60.59% Anglo. As Texas represented to the Justice Department, "virtually every elected official in the State counts significant numbers of Black, Hispanic, or Asian voters among his or her constituency, and accordingly virtually

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[1] *The Minority Voting Rights Analysis for the Texas House of Representatives 1991 Redistricting Plan* was prepared by the Texas Legislative Council. This is the same committee that formulated the plan that was eventually adopted as House Bill 1, which is being challenged here. This document was part of Texas's "submission concerning the original Texas House Redistricting Plan, House Bill 150 . . . forwarded to the U.S. Department of Justice on November 11, 1991." *See* Letter from John Hannah, Jr., Secretary of State, to Assistant Attorney General (May 15, 1992) accompanying Section 5 submission. It is a public document that sheds light on the legislature's intentions and knowledge concerning the background of HB 1. *See Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 267 (1977) ("The historical background of the decision is one evidentiary source . . . ."). Appellees have lodged a copy of the *Minority Analysis* with the Court.

every elected official is responsive to some degree to those voters." *Id.*

As the State has concluded, "Texas has undergone more change, perhaps, than any other state in the past few decades, and has emerged as a modern political entity in which full equality in the political arena is assumed, and to which the official discrimination of the past is largely irrelevant." *Minority Analysis* at 1. Certainly, there is no basis for believing that African-Americans or Hispanics have, in recent years, been prevented from registering or voting in Texas, or otherwise fully participating in the political process. To the contrary, "[r]ecent state laws relating to voting exemplify the Legislature's attention to the concerns of minority voters," and demonstrate that Texas has completely "reject[ed] the discriminatory or restrictive practices of the past." *Id.* at 4. For example, the "state has adopted liberalized voter registration and voter residency requirements, and has provided for extended early (absentee) voting and for branch voting locations for early voting to encourage full participation by everyone qualified to vote." *Id.*

In modern Texas, minorities are not prevented from becoming active in party politics. They have not been hampered from choosing the political party they wish to support, or from being active in the affairs of that party. For example, "[b]oth major political parties in 1990 nominated Black candidates to the Texas Court of Criminal Appeals (the state's court of last resort in criminal cases), and voter turnout for those candidates was equivalent to that for other judicial candidates on the state-wide ballot." *Minority Analysis* at 2. In 1986, the Republican Party voted to nominate an Hispanic, Roy Barrera, for the office of attorney general. *Id.* "In 1990, the Democratic Party nominated a[n] Hispanic, Dan Morales, for attorney general in a very competitive primary, and Mr. Morales went on to win the office in the general election with vote totals from across the state comparable to those of other winning candidates." *Id.*

"In Texas today, minorities are fully integrated into the legislative process." *Id.* at 2. When Texas began the redistricting process in 1990, "[a] Black legislator, Wilhelmina Delco, [was]

the speaker pro tempore of the [Texas] House." *Id.* Before that, an "Hispanic representative, Hugo Berlanga, served in that position for four terms (1983-1990). Six [Texas] House committee chairs are Black or Hispanic, and minority legislators are well represented on the most powerful House committees."[2] The Texas Senate committee assignments similarly reveal no pattern of racial discrimination. *Id.*

Similarly, "recent elections have shown [that] racially polarized voting is less prevalent across the state than in the past." *Id.* For at least the past decade, Texas politics has been marked by much cross-over voting, with a significant number of Anglo voters supporting African-American and Hispanic candidates in both primary and general elections. Consequently, since 1983, African-Americans who comprised at least 40% of the population in any given Texas district have been able to elect their candidate of choice approximately 97% of the time. *African-American Success in Texas*, Pl. Ex. 14K, J.A. 137. Since 1983, even when Blacks comprised as little as 35% of a district's population, they were still able to elect their candidate of choice almost 60% of the time. *Id.*

Hispanics have enjoyed similar electoral success. During the last ten years, Hispanic candidates have won at least 20 elections to the U.S. House of Representative, and held four seats at the time of redistricting. Moreover, at least 10 Hispanics have been elected to the Texas State Senate, as well as seven to the Texas State House. "In 1988 Texas voters elected a[n] Hispanic, Raul Gonzales, to the Texas Supreme Court. Justice Gonzales received the third largest number of votes of any candidate on the ballot, after George Bush for president and Lloyd Bentsen for United States Senator." *Minority Analysis* at 2. "The 150-member state House now has 26 Hispanic members, up

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[2] *Minority Analysis* at 2. Minorities account for seven of 23 members of the House Appropriations committees; 4 of 9 members of the Calendars Committee, which determines what bills are considered by the House; 3 of 9 members of the Higher Education Committee; 5 of 15 members of the Redistricting Committee; and 5 of 13 members of the Ways and Means Committee. *Id.*

from 19 in January 1993. One-third of the state's 21 senators are now Hispanic." Susan Warren, *Strong, Savvy Hispanic Politicians Reflect Group's Changing Values*, *Wall St. J.* (Tex. ed.), July 12, 1995, at T1. In addition, Hispanics "wield considerable influence with non-Hispanic candidates who want or need the Hispanic vote." *Id.*

In sum, even "a cursory look at recent and contemporaneous events in Texas reveals the impact of minorities on the political process, the growing open-mindedness of Texas voters, and the responsiveness of state government to minority concerns." *Minority Analysis* at 1.

1. Minority Success in Harris County (CDs 18 and 29)

The evidence of Anglo cross-over voting for minority candidates in Harris County is overwhelming. For example, during the 1980s, African-Americans comprised as little as 35%-40% of the population of old CD 18. Yet, Blacks were able to elect their candidate of choice in CD 18 — from Representatives Barbara Jordan, to Mickey Leland, to Craig Washington — 100% of the time. *Narrative*, J.A. 110. Similarly, during the 1980s, Anglos in Harris County voted for Hispanics about 50% of the time. *See Campos v. City of Houston*, 1995 WL 478151, at *4-5 (S.D. Tex. July 31, 1995) (rejecting allegation of Anglo racial bloc-voting against Hispanics in Harris County, based on the results of the 1981 mayoral election, a 1989 City Council at-large election, and two 1991 City Council races). In Harris County, "party, not race, [is] the decisive factor in determining electoral outcomes." *LULAC v. Clements*, 999 F.2d 831, 883 (5th Cir. 1993), *cert. denied*, 114 S. Ct. 878 (1994).

The wide-ranging electoral success of African-American and Hispanic candidates in Harris County over the last two decades illustrates this increasing level of Anglo cross-over voting. "[M]inority candidates, and their victories should be ample proof that, by and large, Houston voters continue to be color-blind when it comes to choosing [their]representatives." *Anti-Petition Fever/Voters Forced Eight Runoff Elections on City Council Staff.* Hous. Chron., Nov. 4, 1993, at 22.

Since 1986, African-Americans in Harris County have maintained at least one representative in the Texas State Senate and six representatives in the Texas State House. Mrs. Charles E. White, an African-American, was first elected in an at-large election to the Board of the Houston Independent School District more than thirty years ago, and in the 1990s more than six African-Americans have served on the Houston Independent School District Board. In 1971, Houston elected an African-American to the Houston City Council in an at-large election. Since 1980, at least seven African-Americans have served on the Houston City Council. Since 1988, Harris County has sent at least one African-American to the Texas Board of Education. During the 1980s and 1990s, numerous African-Americans from Harris County served as judges at all levels of the Texas judicial system.

Hispanics have enjoyed similar widespread electoral success in Harris County. For example, an Hispanic was first elected in a Houston at-large election more than 20 years ago. Before and after the 1993 Houston City Council elections, Hispanics filled three of the Council's fourteen seats. One of these Hispanics was elected at-large. Thus, Hispanics currently hold and have held 21.4% of the Houston City Council seats, while comprising only 15.3% of the city's voting age population. *Campos v. City of Houston*, 1995 WL 478151 at *3. Also, many Hispanics from Harris County have served as judges at various levels of the Texas judicial system.

In Harris County, minorities are able to actively participate in the political process. "Not only have the official barriers to minority participation in the political process been long since removed, but the so-called legacy of that discrimination is no longer a significant factor in the legislative process in Texas." *Minority Voting* at 1.[3]

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[3] There is also evidence that Blacks and Hispanics vote cohesively. *See LULAC*, 999 F.2d at 865 (finding that recent elections "compel[] the conclusion that there is [] black-Hispanic cohesion in Harris [County].").

2. Minority Success in Dallas County (CD 30)

Analyzing judicial elections, the Fifth Circuit, sitting *en banc*, recently found that Anglo cross-over voting for Black candidates in Dallas County during the past decade was as high as 77% and 61%. *LULAC*, 999 F.2d at 861. The lowest level of Anglo cross-over voting that the *LULAC* court found was 31%. *Id.* The Court therefore held that, in Dallas County in the 1980s and 1990s, "elections are determined by straight-party voting in which voters support their party's ticket regardless of the race of the candidates." *Id.* at 877.[4]

As a result, "Dallas in 1995 has opportunities for individuals, regardless of where they come from or who they are." Lori Stahl, *Mayor's Consent Seen as Historic Person From Each of the 3 Largest Ethnic Groups has Shot at Win*, The Dallas Morning News, Mar. 5, 1995, at 1A. To illustrate, the current Dallas mayor, Ron Kirk, is an African-American who previously served as Texas's Secretary of State. In winning the mayoralty, he received nearly 40% of the Anglo vote, even though he faced an Anglo opponent. In addition, one Hispanic, "[Ms.] Saenz-Sarabina and [one African-American][Mr.] Rideaux were [recently] chosen to fill two open seats on the Grand Prairie board." Mede Nix, *More Minorities Find Success at Ballot Box*, The Fort Worth Star-Telegram, May 26, 1995, at 23. Similarly, the Kennendale school district board "counts two African-Americans and one Hispanic among its seven members." *Id.*

In sum, this success story confirms that the lower court correctly determined with respect to Harris and Dallas Counties that "[i]n Texas in the 1990's, it is no longer accurate to assume that this condition [of Anglo majorities voting as a bloc to defeat

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[4] There was substantial evidence presented at trial that the partisan nature of judicial elections in Texas makes electoral data generated from such elections relevant when evaluating congressional vote dilution claims. *See e.g.*, Weber Testimony, 6/29/94 Tr. at 52 ("there is overwhelming evidence of partisan voting in judicial races in Texas"); *see also id.*, 7/1/94 Tr. at 9-10, 22 (noting that the state's expert also included judicial elections in his analysis).

minority candidates] exists in every case." *Vera*, 861 F. Supp. at 1343 n.54.

B. DEVELOPMENT OF TEXAS'S REDISTRICTING PLAN

Prior to HB 1, Hispanics constituted the majority in five of Texas's 27 congressional districts.[5] There was also one African-American opportunity district. *See Narrative*, J.A. 105.[6] Because of the substantial increase in the State's population since 1980, *Id.*, J.A. 104, Texas's congressional delegation increased from 27 to 30 members.

1. The Commitment to "Safe" Single-Race Majority Districts

When Texas began its redistricting process in 1990, it decided that three new minority districts would be created. *See* Brief of the State of Texas on the Merits at 4. ("[t]he Legislature decided early in the redistricting process that the three additional congressional seats that Congress reapportioned to Texas after the 1990 census would all be new minority opportunity voting districts . . . ,") [hereinafter Texas Brief].[7]

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[5] Hispanics were majorities in CDs 15, 16, 20, 23, and 27. CD 18 was an African-American opportunity district. *See Congressional Quarterly's Politics in America 1992: The 102nd Congress* at 1409-91. In this brief, Appellees will use the phrase "opportunity" district to refer to districts in which a particular minority group does not constitute the majority, but is sufficiently large to be able to elect its candidate of choice most of the time. These are to be distinguished from "single-race majority" districts, in which a particular minority group constitutes more than 50% of the inhabitants in a district.

[6] In 1980, African-Americans comprised 40.8% of the population in CD 18. Projected Population Changes in Texas Districts, Pl. Ex. 13B, at 55. By 1990, this figure had dropped to 35%. *Narrative*, J.A. 105. As noted, however, Blacks were consistently able to elect their candidate of choice in this district.

[7] Texas made extensive efforts during the redistricting process to guarantee that bloc voting by a single minority group would allow it to control election outcomes without the need to form coalitions with other groups —

(footnote continues)

Plans were submitted that would have further enhanced the voting strength of minority voters while still respecting other traditional districting principles. Rejecting these more compact, alternative redistricting plans, the Texas Legislature in 1991 adopted plan C657 as House Bill 1. Stipulations of the parties in *Vera v. Richards* (June 30, 1994), J.A. 64, 71. This plan created three new, safe, single-race majority districts for Blacks and Hispanics (CDs 28, 29, and 30), and increased the African-American population in another, CD 18, rendering it a safe, single-race majority district as well.

The Senate congressional redistricting panel's first proposed plan did not create a majority African-American district in Dallas County, but rather a new district that was "only" 39% African-American. Newspaper Article from Times Herald Washington Bureau, U.S. Ex. 1033, J.A. 347. Then-state Senator Eddie Bernice Johnson, an African-American who aspired to (and now does) represent CD 30, and who was in charge of the redistricting process in the Texas Senate, *Vera*, 861 F. Supp. at 1313, also submitted her own plan proposing a more compact CD 30 than now exists. Under her plan, CD 30 would have been 44.5% African-American and 23.5% Hispanic. Map of Texas Proposed Congressional Districts Plan C500, PL. Ex. 29A, J.A. 139.

In response to these proposals, Dallas's Black leaders demanded a 50% Black district. U.S. Ex. 1033, J.A. 347-48. Thereafter, then-state Senator Johnson made the creation of a single-race majority district for the African-American residents of Dallas her "dominant goal" in the redistricting process:

> I had made a commitment to that Black community, that they would have a safe district, as had been mandated and expected for a number of years, and I did not intend to go home without that.

(footnote continued)

thus, making the seats racially "safe." These efforts highlight the disingenuousness of Texas's attempt now to characterize these racially gerrymandered seats as minority "opportunity" districts. *See, e.g.*, Texas Brief at 2-4, 23.

Johnson Deposition, 6/13/94 Tr. at 231, J.A. 426. *See also* Blair Testimony, 12/12/91 Tr. at 108, J.A. 410 (the African-American community "wanted nothing less than a 50 percent Congressional district").

Texas reported that Dallas's African-Americans felt that such a district "was necessary to assure its ability to elect its own Congressional representative without having to form coalitions with other minority groups." *Narrative*, J.A. 106. Then-state Senator Johnson explicitly sought to satisfy this desire to have "a safe Black district without having to build coalitions." Johnson Deposition, 6/13/94 Tr. at 237, J.A. 432. "In the end, this idea of a 50 percent [black] district grew and it took on a life of its own, and Eddie Bernice [Johnson] had no way to compromise on that issue." U.S. Ex. 1033, J.A. 348 (internal quotations omitted).

Similarly, various interest groups asserted the claims of Hispanics in Harris County. *Vera*, 861 F. Supp. at 1324. Roman Martinez, "the primary architect of the lines in Harris County," *id.*, said that Texas's goal was "to insure that we created for the first time a Congressional seat for the Hispanic community to elect the first Hispanic Congressman." Martinez Testimony, 12/12/91 Tr. at 134, J.A. 415. As the Department of Justice reports, "[a]t the outset of the 1991 redistricting, Hispanics in Harris County made clear that they opposed the creation of districts in which blacks and Hispanics were combined to form a majority . . . [T]hey favored a plan that would create a[n Hispanic] district while retaining a black opportunity district." Brief of the United States Department of Justice at 10 [hereinafter DOJ Brief].[8]

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[8] Rep. Martinez later testified that, in creating Districts 18, 29, and 30, the Legislature's "main emphasis was to try to make sure that the Hispanic district in Harris County was going to elect a[n] Hispanic and that the Black district in Dallas was going to elect [a Black]." *Martinez Testimony*, 12/12/91 Tr. at 137-38, J.A. 418. Christopher Sharman, the state's chief computer operator who was responsible for drawing district boundaries, admitted that in Harris county the state was "creating a Hispanic district, so yes, [Texas] put Hispanics in — in the 29th." Sharman Deposition, 6/18/94 Tr. at 164, J.A. 491.

All of the participants in Texas's redistricting process were aware that the United States Department of Justice at this time essentially required states to maximize single-race majority districts. *See Miller v. Johnson*, 115 S. Ct. 2475, 2483-84, 2489 (1995) (describing the Justice Department's maximization policy). At various points in the redistricting process, individuals committed to securing three single-race majority districts used the threat of Justice Department intervention to intimidate other legislators into accepting a plan that created three single-race majority districts.[9]

Later on, the shapes of the district lines were somewhat altered to accommodate the interests of certain (white Democratic) House incumbents, who sought African-American voters to aid their reelection chances. But the legislature never permitted those accommodations to detract from the primary goal of creating racially safe districts. The minority voters assigned to the adjoining incumbents' districts in Dallas County were generally those who were less likely to vote, and therefore less desirable to Eddie Bernice Johnson. Johnson Testimony, 12/12/91 Tr. at 234-35 & 248-49, J.A. 429-30 & 435.[10]

Thus, in designing these "safe," single-race majority-minority districts, the desires of incumbent congressmen were always reconciled with the preservation of these districts' racial character. In fact, during the redistricting process Texas Lieutenant Governor Bullock made clear that "what the black community says it needs, that's what [the Legislature's] going to do." U.S.

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[9] *See, e.g.*, U.S. Ex. 1033, J.A. 348 (State Representatives "[Johnson and Blair] promised legal action to overturn any redistricting plan they did not accept, including intervention with the Justice Department."); Letter from Eddie Bernice Johnson to the Department of Justice, Civil Rights Division, Pl. Ex. 6E (complaining about treatment of Blacks in Tarrant County.)

[10] *See also Narrative*, J.A. 107 (goal in Dallas was "not only [to] create a district that would maximize the opportunity for the black community to elect a Congressional candidate of its choice in 1992, but also one that included some of the major black growth areas which will assure continued electoral and economic opportunities over [time]"); Texas Brief at 42.

Ex. 1033, J.A. 349 (internal quotation omitted). As Congressman Bryant, one of the incumbent congressmen fighting for minority voters stated, "[i]t was largely out of our hands after that." *Id. (internal quotation omitted); see also Vera*, 861 F. Supp. at 1320 n.20.

2. The Means of Achieving "Safe" Single-Race Majority Districts

To achieve the goal of creating these new, safe, single-race majority districts, Texas used sophisticated computer software to draw congressional districts along precise racial lines. *Vera*, 861 F. Supp. at 1336 ("Racial data were an omnipresent ingredient in the redistricting process."). This software, known as REDAPPL, could have handled a variety of demographic data (*e.g.*, income, education, etc.). But the state chose to program REDAPPL to constantly evaluate and display on the computer monitor congressional districts, counties, cities, VTD's ("voter tabulation districts" or precincts), and even census blocks, by race only. REDAPPL ensured that when the State redrew its congressional boundary lines, it had "nearly exact knowledge of the racial makeup of every inhabited block of land in the state." *Id.* at 1309. As a result, REDAPPL "provided a readily available, efficient means of" allocating voters "on the basis of race." *Id.* at 1318.

Other than racial data, the REDAPPL system had voting data, but only down to the precinct level. Once a precinct was split, all data was lost except for racial data, which was available at the block level. Thus, racial information "was the most specific information that could be used by those involved in the districting process." *Id.* at 1336.

Then-state Senator Johnson agreed that REDAPPL was essential to the redistricting process. She praised the State's ability to use computers to divide counties, cities, towns, and precincts by race. "When I look at these [redistricting] maps I thank God for computers." Excerpts from Senate Committee of the Whole Hearing on Redistricting, Aug. 24, 1991, at 14, U.S. Ex. 1092, J.A. 369.

C. TEXAS'S REDISTRICTING PLAN

Texas's plan, as adopted, split thirty-four counties. Only six of these splits were required because the population of those counties exceeded the number of persons required for a single district.[11] The boundaries of all of these districts appear to be drawn exclusively to achieve the desired racial composition. *Vera*, 861 F. Supp. at 1339, 1340-41.[12]

The correlation between race and the district boundaries was nearly perfect. "The borders of Districts 18, 29 and 30 change from block to block, from one side of the street to the other, and traverse streets, bodies of water, and commercially developed areas in seemingly arbitrary fashion until one realizes that those corridors connect minority populations." *Id.* at 1336.

1. CDs 18 and 29 (Harris County/Houston).

Prior to the 1991 redistricting, Hispanics constituted 42.2% of CD 18 while, as noted, African-Americans made up 35.1% of that district. Houston's integrated housing patterns therefore posed a practical barrier to the creation of two compact districts in which one minority group would constitute a majority. The United States admits that, in Harris County, it was only "possible to create one reasonably compact district in which blacks would have an opportunity to elect the candidate of their choice *or* one reasonably compact district in which Hispanics would have an opportunity to elect the candidate of their choice." DOJ Jurisdictional Statement at 11 (emphasis

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[11] By comparison, the 1980 congressional redistricting plan split just 10 counties. Three of those splits were required by the "one-person, one-vote" rule. *See e.g.*, Texas Congressional Districts for the 99th-102nd U.S. Congress, Pl. Ex. 27; Weber Report, Pl. Ex. 36, J.A. 162.

[12] *See also Vera*, 861 F. Supp. 1304. Indeed, the same may be said about almost all of Texas's congressional districts. *Id.* at 1326 ("Many of the remaining districts challenged by the plaintiffs share a troubling characteristic: counties within the district appear to be split along racial lines."). These counties include virtually all of Texas's cities, including Amarillo, Lubbock, Bryan, Midland, Odessa, Denton, Plano, Garland, San Angelo, Tyler, and others. *Id.* at 1326-28.

added).[13] Nonetheless, new CD 18 contains 50.9% total Black population and new CD 29 contains 60.6% Hispanic population. *Id.*[14]

In choosing to create *both* a majority Black and a majority Hispanic district in Harris County, Texas necessarily chose to either (1) draw both districts in such a way that neither of them is "reasonably compact," or (2) draw one of the districts in a compact fashion and draw the other in an irregular manner. *See* Texas Jurisdictional Statement at 6 ("To draw both a majority-black district and a majority-Hispanic district, however, it was necessary to draw districts with somewhat irregular lines.").

The State was able to create both a majority-Black and a majority-Hispanic district in Harris County only by drawing districts at the block level and by splitting most of the precincts and substantially all the municipalities in the area.[15] Analysis of the split precincts revealed that "an overwhelming majority of those individuals placed in District 29 were Hispanic while an overwhelming majority placed in District 18 were African-American." *Vera*, 861 F. Supp. at 1341 n.51.

More than 50% of the VTDs were split, and 60% of the residents in CDs 18 and 29 live in split VTDs. *Id.* at 1340. Due to

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[13] *See also* DOJ Jurisdictional Statement at 6; Richard H. Pildes & Richard G. Niemi, *Expressive Harms, "Bizarre Districts," And Voting Rights: Evaluating Election-District Appearance After Shaw v. Reno*, 92 Mich. L. Rev. 483, 563-64, 567, 569 (1993) [hereinafter Pildes & Niemi]. At trial, Mr. Sharman also admitted that because of Houston's integrated residential neighborhoods, it was not possible to create both a compact majority-black district and a compact majority-Hispanic district. Sharman Testimony, 6/30/94 Tr. at 69.

[14] In drawing these districts, the Texas Legislature again rejected more compact proposals. Eddie Bernice Johnson's plan for CD 18 would have been 46.9% African-American, for example. Her proposed CD 29 would have been 47.6% Hispanic. *See* Texas Proposed Congressional Districts, Pl. Ex. 29A, J.A. 139.

[15] All eight of the cities found in CD 18 have split populations; fourteen municipalities in CD 29 are split. Map of Harris County U.S. Congressional Districts 103rd-104th Congresses 1989 City Limits, Pl. Ex. 34D(1), J.A. 147 (map of CDs 18 and 29 showing split municipalities).

the absence of voting data at the block level, this necessarily means that at least 60% of these voters must have been allocated according to race.[16]

"Congressional Districts 18 and 29 were tailored to include designated numbers of minority voters." *Id.* at 1339. "An appreciation for the precision with which [the]segregation of Hispanics and African-Americans in Harris County was carried out may not be had without a detailed look at the map of District 18 based on African-American population distribution by Census block and the map of District 29 based on Hispanic population distribution by Census block." *Id.* at 1323.[17] "In fact, these districts are so finely "crafted that one *cannot* visualize their exact boundaries without looking at a map at least three feet square." *Id.* (emphasis in original). (Appellees have lodged such over-sized maps with the Court.) Districts 18 and 29 have been categorized as among the most non-compact in the nation. *See* Pildes & Niemi *supra* note 13, at 563-64, 567, 569.

2. CD 30 (Dallas County)

"Throughout the course of the Congressional redistricting process, the lines of the proposed District 30 were constantly reconfigured in an attempt to maximize the voting strength for this black community in Dallas County." *Narrative*, J.A. 106. As a result, CD 30 "is at least 25 miles wide and 30 miles long, but those measurements do not begin to reveal the district's

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[16] Only 221 of the existing 672 precincts in Harris County were *not* split by HB 1. Moreover, in Harris County alone, the number of precincts rose from 672 to 1225, with 140 of those precincts having fewer than 20 registered voters. In addition, 62 precincts had no registered voters whatsoever. Letter regarding Split-Precincts in Harris County, Nov. 2, 1991, Pl. Ex. 6E1, at 3-4, J.A. 123-125; *See also id.*, attachment A (Map of Precinct 607 split into 9 precincts.)

[17] *See also* Map of Harris County Black Population Distribution by VTD, Plan C657, Pl. Ex. 34H8, J.A. 151; Map of Harris County Hispanic Population Distribution by VTD, Plan C657, PL. Ex. 34H9, J.A. 152.

geographical complexity." *Vera*, 861 F. Supp. at 1338. Sprawling throughout Dallas County, CD 30 splits all 21 of the municipalities found in the district.[18]

"To create a 50 percent black district, the proposed district [30] snaked through North Dallas into Plano, sometimes forming corridors barely wider than Central Expressway and LBJ Freeway." U.S. Ex. 1033, J.A. 349. "In some integrated parts of Pleasant Grove and Oak cliff, neighborhoods were divided so that black apartment dwellers are in one district while their white neighbors are in another district." *Id.*

CD 30 extends fingers into Collin County, which includes only the outermost suburbs of Dallas, picking up one small African-American neighborhood. The district reaches into Tarrant County, where it picks up a small border area with a high African-American concentration. *See Vera*, 861 F. Supp. at 1337-38; Map of Texas Districts of the 103rd U.S. Congress Plan C657 Dallas County, PL. Ex. 34H2, J.A. 146.

"Republican state Rep. Fred Hill of Richardson protested that if you live more than 100 yards off the freeway, you're out of [] district [30] at some points." U.S. Ex. 1033, J.A. 349. "Part of the district [even] runs along the [uninhabited] Trinity River bottom, using it to connect dispersed minority population[s]." *Vera*, 861 F. Supp. at 1338. This was thought necessary, in part, because as "the principal architect" of CD 30, *id.* at 1320, then-state Senator Johnson, testified: since 1980 "the whole core of th[e Black] area was moving out." *Id.*

As in Houston, racially integrated residential neighborhoods in Dallas County presented a substantial impediment to creating single-race majority districts. The only "remedy" to this residential integration was splitting precincts by race. Thus, after redistricting, 39% of the population of CD 30 live in split precincts. Report of District by Voter Registration and Turnout Analysis Using Hispanic and Non-Hispanic Registered Voter

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[18] Map of Split Cities in Texas Districts of the 103rd U.S. Congress Plan C657 Dallas County, PL. Ex. 34D(2), J.A. 148 (map of CD 30 showing split municipalities).

Allocation by 1990 VTDs, PL. Ex. 34R. In addition, there are 17 precincts with fewer than 20 registered voters and 13 precincts with no registered voters at all. Report of District with Whole/Split Counties and Split 1990 VTDs with Ethnic Composition, PL. Ex. 34Q. As the lower court found, "the contours of Congressional District 30 are unexplainable in terms other than race. They have no integrity in terms of traditional, neutral redistricting criteria. Neighborhoods, VTDs, and individual streets were split to achieve the district's racial mix." *Vera*, 861 F. Supp. at 1339.

D. THE TERRAZAS v. SLAGLE LITIGATION

HB 1 was unsuccessfully challenged by certain Republicans as an unconstitutional partisan gerrymander in violation of *Davis v. Bandemer*, 478 U.S. 109 (1986), and by certain minorities as an unlawful vote dilution under Section 2 of the Voting Rights Act. *Terrazas v. Slagle*, 821 F. Supp. 1162 (W.D. Tex. 1993). At trial, Congresswoman Johnson testified that race, not partisanship, was the most important factor in the redistricting process. She stated "[m]y goal in Congressional redistricting was to be sure that minorities had the maximum number of seats that they could have." Johnson Testimony, 12/12/91 Tr. at 232, J.A. 426.[19]

In the *Terrazas* action, Congresswoman Johnson further testified that her sole focus in drawing CD 30 was looking out for African-American voters, and that she did not worry about the influences of incumbent Congressman Martin Frost or John Bryant. When asked, she denied accommodating Congressman Frost and Bryant, stating that "I got beat up so many times because I wouldn't do anything but look out for Black voters." Johnson Testimony, 12/12/91 Tr. at 247, J.A. 435, *quoted in Vera*, 861 F. Supp. at 1320.

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[19] In general, the district court found the testimony provided by Texas redistricting officials in the *Terrazas* litigation, and particularly that of Congresswoman Johnson, to be more credible than their testimony in this case. *See Vera*, 861 F. Supp. at 1321.

Ms. Johnson attributed the bizarre boundaries of CD 30 to two competing tensions — (1) the fact that the District was intended to be a safe African-American district; and (2) the fact that the African-American population of Dallas County had dispersed. "In sum, Congresswoman Johnson testified in *Terrazas* that the shape of Congressional District 30 . . . can be understood as a conscious effort to pick up African-American voters who had dispersed from the core area." *Vera*, 861 F. Supp. at 1320.

In addition, Sen. Johnson testified that, to effectuate the overriding goal of racial safety, she was allowed to pick and choose among "performing" African-American voters. This left the "non-performing" African-American voters for incumbents Bryant and Frost. Johnson Testimony, 12/12/91 Tr. at 248, J.A. 435, *quoted in Vera*, 861 F. Supp. at 1320; *See also* Blair Testimony, 12/12/91 Tr. at 108-109.

Similarly, Rep. Martinez testified that the creation of two single-race majority districts was the primary motivating factor in the redistricting of Harris County:

> Again, the first goal was to assure no retrogression for the 18th Congressional District, insuring that was maintained as an African-American district. And then, secondly, it was a very important goal as a Hispanic representative to insure that we created for the first time a Congressional seat for the Hispanic community to elect the first Hispanic Congressman.

Martinez Testimony 12/12/91 Tr at 134, 146, J.A. 415, 421, *quoted in Vera*, 861 F. Supp. at 1324.

Although the *Terrazas* court ruled that the 1991 Texas Congressional Redistricting plan did not dilute the voting rights of racial, ethnic, or political minorities, the court noted that "the configuration of District 30 closely resembles a microscopic view of a new strain of disease, and has been the subject of well-deserved national ridicule *as the most gerrymandered district in the United States.*" *Terrazas v. Slagle*, 789 F. Supp. 828, 834 (W.D. Tex. 1991) (emphasis added) (preliminary proceeding in the *Terrazas* litigation). *Terrazas v. Slagle*, 789 F. Supp.

828, 834 (W.D. Tex. 1991) (emphasis added) (preliminary proceeding in the *Terrazas* litigation).

E. DECISION BELOW

Plaintiffs filed this constitutional challenge on January 26, 1994.[20] The case was tried before a three-judge panel on June 27-30, and concluded on July 1, 1994. The District Court filed its Opinion on August 17, 1994. The court concluded that Texas "repeatedly segregated [African-American, Hispanic, and Anglo] populations by race to further the prospects of incumbent officeholders or to create 'majority-minority' Congressional districts." *Vera*, 861 F. Supp. at 1309. The court found that CDs 18, 29, and 30

> were conceived for the purpose of providing 'safe' seats in Congress for two African-American [representatives] and an Hispanic representative[]. They were scientifically designed to muster a minimum percentage of the favored minority or ethnic group; minority numbers are virtually all that mattered in the shape of those districts. Those districts consequently bear the odious imprint of racial apartheid, and districts that intermesh with them are necessarily racially tainted.

Id.

The district court rejected Texas's argument that incumbency protection, and not invidious racial discrimination, explained the bizarre nature of the districts. Citing the inconsistent evidence submitted at trial and the failure of witnesses involved in the redistricting process to appear, the court found as a matter of fact that:

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[20] Their original complaint asked for a permanent injunction and declaratory judgment against the Governor, the Lieutenant Governor, the Attorney General, and the Secretary of State, as well as the Speaker of the Texas House of Representatives. The court later granted the motions to intervene of six African-American voters ("Lawson Intervenors"), the United States, and seven registered Hispanic voters and the League of United Latin American Citizens (together "Reyes Intervenors").

> [T]he policy of incumbent protection, to the extent it motivated the Legislature, was not a countervailing force against racial gerrymandering. Instead, racial gerrymandering was an essential part of incumbency protection, as African-American voters were deliberately segregated on account of their race among several Congressional districts.

Vera, 861 F. Supp. at 1339.[21]

Applying strict scrutiny, the district court found that, even if the Voting Rights Act could substantiate a compelling governmental interest, the State's admission "that more traditional districts could have been fashioned," *Vera*, 861 F. Supp. at 1342, made it "impossible" for the State to argue "that Districts 18, 29, and 30 are 'narrowly tailored' to fulfill the State's obligations under the Voting Rights Act and would thus withstand the strict scrutiny test." *Id.*

F. APPEAL FROM THE DISTRICT COURT

The State's notice of appeal was filed on September 22, 1994, and its Jurisdictional Statement was submitted on October 31, 1994. The Lawson and Reyes Defendant-Intervenors submitted their Jurisdictional Statement on November 2, 1994. The Plaintiffs filed their Motion to Affirm on November 30, 1994. On June 29, 1995, the Court noted probable jurisdiction.

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[21] The District Court noted that a number of high-level Texas officials involved in formulating HB 1 refused to testify in this case. *See Vera*, 861 F. Supp. at 1338. For example, Robert Mansker, an aide to Congressman Frost and a major figure in the Texas redistricting process, successfully avoided being served with a subpoena to testify in this case. Affidavit of Stefon R. Whiting, Sr., June 22, 1994, PL. Ex. 37, J.A. 188-90. Similarly, Matt Angle, another top Texas redistricting official, succeeded in avoiding service and refused to testify. Congressman Frost later confirmed that Angle and Mansker purposely avoided being served: "'Let's just say they weren't around for a couple of days.'" Ron Hutcheson, Frost Aides Evaded GOP Subpoena, Fort-Worth Star Telegram, July 28, 1994, at 1. Mansker's failure to testify was particularly important, given that Texas's redistricting "plan was the product of Bob Mansker." *Almanac of American Politics 1994* at 1207.

The Court has jurisdiction over this matter under 28 U.S.C. § 1253 (1988).[22]

SUMMARY OF ARGUMENT

Carefully weighing all of the evidence, the three-judge district court unanimously rejected the Appellants' contention that incumbency protection was the primary motivation for the creation of three new, bizarre, single-race majority congressional districts. To the contrary, the district court concluded that Texas had subordinated other considerations to the overriding and predominant goal of establishing three "safe," single-race majority seats in CDs 18, 29, and 30. Although the lower court recognized that incumbents were permitted to influence the eventual shape of adjoining districts, the court found that the interests of these incumbents were always secondary to the objective of maintaining three "safe," single-race majority districts.

In so finding, the district court relied on copious evidence that Texas was predominantly motivated by race. To illustrate,

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[22] With respect to certain other Texas congressional districts plaintiffs challenged as unconstitutional, the district court found "an extremely high correlation between the irregular features of many of these districts and the racial populations they are drawn to include or exclude." *Vera*, 861 F. Supp. at 1345; *see also* Maps of Split Counties (Black & Hispanic Populations), PL. Ex. 34(H). Nonetheless, the court determined that "[i]t does not follow . . . that racial gerrymandering occurred." *Vera*, 861 F. Supp. at 1345. The court based this judgment on its view that the outlines of these other districts were not "highly irregular apart from the small racially distinct appendages." *Id.* While Plaintiffs respectfully disagree, particularly in light of this Court's opinion in *Miller v. Johnson*, 115 S. Ct. 2475 (1995) the district court's ability to distinguish between the three districts that "function primarily to include sufficient numbers of the favored minority groups," *Vera*, 861 F. Supp. at 1345, from the 21 districts created to serve "both race and politics," *id.*, refutes any concerns that the Court's *Miller* standard is not judicially manageable. *See also DeWitt v. Wilson*, 856 F. Supp. 1409 (E.D. Cal. 1994), *dismissed for want of a substantial federal question*, 115 S. Ct. 2637 (1995) (rejecting racial gerrymandering challenge to California's congressional reapportionment plan).

past voting data was *not* made available to the map drawers at the block level; such data was only available at the precinct level. Those drawing the maps did, however, have constant access to racial data on a block-by-block level. In constructing these bizarre, single-race majority districts, Texas split a vast number of precincts. Since partisan election results were not available once a VTD was split, these precincts, which comprise 60% of Harris County's population, for example, are inevitably divided along racial, and not partisan lines.

Primarily, Texas used race for the purpose of constructing three non-compact single-race majority districts because it believed that the Justice Department required it to do so and because certain African-American and Hispanic elites demanded them. In addition, Texas used "race as a proxy," *Miller v. Johnson*, 115 S. Ct. 2475, 2487 (1995), as a tool, for protecting incumbents. Texas argues that the use of race as such a tool prevents strict scrutiny from applying. This argument must be rejected. *Miller* unequivocally rejected the "demeaning notion" that "individuals of the same race share a single political[] interest" and may therefore be grouped together on that basis. *Id.* (citations and quotation marks omitted).

Moreover, given that "[p]olitics and political considerations are inseparable from districting and apportionment," *Gaffney v. Cummings*, 412 U.S. 735, 753 (1973), the Court would put an end to all *Shaw* claims if it were to accept Appellants' contention that strict scrutiny does not apply because the racial divisions Texas created served the ends of various incumbents, or if it were to require the plaintiffs to prove that every point on a district's border was based solely on race. *Shaw v. Reno*, 113 S. Ct. 28161 2816 (1993). The Equal Protection Clause teaches that there are limits on what politicians and state governments may do, even where a goal is to secure their own reelection. After all, the white primary and the poll tax may have been effective means of protecting incumbents, but they are clearly unconstitutional.

Essentially applying *Miller's* predominant factor test even though *Miller* had not yet been decided by this Court, the lower

court held that three of the 24 districts challenged by the Appellees should be subjected to strict scrutiny. Although the district court found evidence that race played a significant role in the formation of many of the other districts, including two other single-race majority districts, the lower court held that race was *not* the primary motivation in their creation. The district court's ability to distinguish between districts that should appropriately be subjected to strict scrutiny, and those that it determined should not, illustrates the manageability of *Miller's* predominant-motivation test. It also rebuts the Chicken Little cries of Appellants that *Miller* means open season on all of the Nation's 435 congressional districts, or its many single-race majority districts.

The district court's judgment that the state's predominant motive in redistricting was racial is not clearly erroneous. Accordingly, under this Court's decisions in *Shaw* and *Miller*, Texas's redistricting plan must be subjected to strict scrutiny.

Texas's proclamation that its goal in redistricting was incumbency protection precludes it from shifting rationales in an attempt to satisfy strict scrutiny, by claiming that its purpose in drawing these bizarre, single-race majority districts was remedial. As the district court properly found, "the state cannot have it both ways." *Vera*, 861 F. Supp. at 1338. The state's use of race for the admittedly non-remedial purpose of protecting incumbents is by itself sufficient to warrant a finding that CDs 18, 29, and 30 are unconstitutional.

This Court should therefore refuse even to examine Texas's contention that, if this Court were to apply strict scrutiny, the Voting Rights Act required Texas to draw such districts. *Post hoc* rationales are not permitted to satisfy strict scrutiny. But even if this Court were to take the unprecedented step of examining such a rationale, it is patently faulty. In fact, the Voting Rights Act is not even relevant — unless it is perfectly consonant with the constitutional requirement that race can only be used to remedy identifiable past discrimination. If the Voting Rights Act is so construed, Appellees still must prevail because neither the Constitution nor

that Act can be interpreted to require the construction of these three bizarre, single-race majority districts.

Here, Texas never even attempted to determine whether its customary redistricting process would have produced racially discriminatory districts. Without such a step, Texas could not possibly make a case that the Voting Rights Act compelled it to create these three bizarre districts, let alone show that it has correctly ascertained its obligations under the Voting Rights Act, as it is required to do. Requiring States to undertake such a searching factual inquiry would enable courts to assess whether in fact a problem exists in the voting process that necessitates drawing legislative districts along racial lines. Such a requirement would also give guidance to State legislatures as they commence their redistricting process.

In any event, Section 5 of the Voting Rights Act does not apply because retrogression is not an issue here; these are new single-race majority-minority districts. The lower court also properly held that the *Thornburg v. Gingles*, 478 U.S. 30 (1986) factors could not be satisfied here because of the bizarre, non-compact nature of the three districts. It further found that the third *Gingles* precondition — racial bloc voting by Anglos — is not present in Texas today. Rather, the lower court found as a matter of fact that, "[i]n Texas in the 1990s, it is no longer accurate to assume that this condition [of Anglo majorities voting as a bloc to defeat minority candidates] exists in every case." *Vera*, 861 F. Supp. at 1343 n.54. In addition, Section 2 does not compel the construction of these districts because Texas cannot possibly show that, in modern Texas, African-Americans or Hispanics have been denied an equal opportunity to participate in the political process and to elect their representatives of choice. Indeed, interpreting the Voting Rights Act to compel these districts would require a finding that the Voting Rights Act itself is unconstitutional.

The district court also rejected the arguments, renewed here, that Texas had a compelling governmental interest apart from the Voting Rights Act to engage in racial gerrymandering. Even assuming that such an interest were to exist, and it does not,

Texas has not made any showing other than a claim that it wishes to remedy general societal discrimination. This Court has, of course, regularly rebuffed attempts to use race for such an untrammelled purpose.

This Court should affirm the lower court's determination that, in any event, the bizarre, single-race majority districts adopted here are not narrowly tailored to accomplish a legitimate, remedial objective, particularly in light of the more compact alternatives ignored by the legislature. Race-based remedies are constitutional only for identifiable victims of racial discrimination. In the voting rights context, this requires a finding that individuals of a particular race are being denied, on account of their race, a meaningful opportunity to vote together with other people with whom they live. The appropriate remedy in such a case — and the approach rejected by Texas here — is to keep those individuals together as a community, and enable them to vote in the same compact district. "Capturing" other individuals who share the same skin color, while excluding the people with a (possibly valid) Section 2 claim, does not provide remedies for those individuals who have been denied equal voting rights.

Indeed, such forbidden racial stereotyping is premised on the erroneous assumption that every minority "think[s] alike, share[s] the same political interests, and prefer[s] the same candidates" as others who share their skin color. *Shaw*, 113 S. Ct. at 2818. To put it more simply, if an African-American in South Dallas is a victim of racial discrimination in voting, his problem is not solved because an African-American in North Dallas, or the neighboring city of Plano, is captured to take his place. Yet that is the position of the Appellants.

This Court has already made clear in both *Shaw* and *Miller* that race-based districting raises the most serious equal protection concerns. Continued vindication of those concerns requires that the lower court be affirmed.

ARGUMENT

I. APPELLEES HAVE STANDING TO CHALLENGE DISTRICTS 18, 29, AND 30 UNDER THE FOURTEENTH AMENDMENT.

The allegations that Appellees lack standing ignores this Court's decision last Term in *United States v. Hays*, 115 S. Ct. 2431 (1995). There, the Court held that "[w]here a plaintiff resides in a racially gerrymandered district,[] the plaintiff has been denied equal treatment because of the legislature's reliance on racial criteria, and therefore has standing." *Id.* at 2436. Because all of the Appellees either live in or next to the districts under challenge, *see* Texas Jurisdictional Statement at 20-21, they have standing to bring this suit.

A. Voters Who Live in Districts that Have Been Drawn Along Racial Lines Have Standing to Challenge Such Districts.

This Court has consistently "recognized the harms caused by racial classifications." *Hays*, 115 S. Ct. at 2435. One of those harms, which this Court has said is cognizable under the Fourteenth Amendment, is being subjected to a redistricting scheme that "cannot be understood as anything other than an effort to separate voters into different districts on the basis of race." *Shaw*, 113 S. Ct. at 2828. Such schemes "reinforce [] racial stereotypes and threaten [] to undermine our system of representative democracy by signaling to elected officials that they represent a particular racial group rather than their constituency as a whole." *Id.*

Under *Hays*, "[a]ny citizen able to demonstrate that he or she personally has been injured by that kind of racial classification has standing to challenge the classification in federal court." *Hays*, 115 S. Ct. at 2436. Appellees therefore have standing to bring this Equal Protection claim "because they have established that they are registered to vote in [Texas's] congressional elections and that the challenged redistricting plan assigns them to vote in particular electoral districts at least in part because of

their race." *Shaw v. Hunt*, 861 F. Supp. 408, 473 (E.D.N.C. 1994).

B. Appellees Suffered Identifiable Stigmatic and Systemic Harms

The Appellees in this case have also suffered from "the special representational harms racial classifications can cause." *Hays*, 115 S. Ct. at 2436; *see also Shaw*, 113 S. Ct. at 2827-28 (identifying stigmatic and systemic harms flowing from bizarre, racially gerrymandered districts). For example, Appellee Edward Blum testified that he felt stigmatized by Texas's racially polarized redistricting process. *See* Texas Jurisdictional Statement at 20.

Moreover, these bizarre districts harmed the Appellees by creating barriers to political participation, candidate effectiveness, and responsive representation. The isolated and distended pockets of voters created by the otherwise irrational construction of the districts under challenge here spawned administrative confusion and electoral barriers to voter participation. *See Vera*, 861 F. Supp. at 1334 n.43, 1339 ("The effect of splitting dozens of VTD's to create Districts 18 and 29 was an electoral nightmare."); *see* PL. Ex. 6E1, J.A. 121. For example, describing CD 30 as the "portrait of a racial gerrymander," voting rights scholars criticized it as creating havoc for "members of Congress as they campaign for election and re-election, and for voters as they seek constituency services." Carol Swain, *Black Faces, Black Interests* 196-197 (1995).

In CD 18, voters, including Appellees, were frustrated and confused by the district's meandering shape. They did not know the candidates running for office, and asked why the district had been arbitrarily changed. *See* Powers Deposition, 4/26/94 Tr. at 43-44, J.A. 445, 446-47. Plaintiff Edward Blum, who ran for Congress in new CD 18 in 1992, testified that he "and his wife spent months walking the entire district in order to shake hands with the voters. They had to carry a map to identify the district lines, because so often the borders would move from block to

block." *Vera*, 861 F. Supp. at 1340 (citing Blum Testimony, 6/27/94 Tr. at 20-21).

Similarly, as a result of CD 29's "tortuous[]" boundaries, "voters were confused and frustrated. They did not know why their district had been arbitrarily changed, and they did not know the candidates running for office. . . . The boundaries had become so complex that the county clerk's office sent the wrong ballots to certain precincts and erroneously counted those votes within District 18." *Id.*

Moreover, as an Anglo candidate for Congress in CD 18, Blum has standing because one of Texas's primary purposes in constructing these three single-race majority districts was to ensure that he would not be elected on account of his race. The testimony of Texas's legislators makes clear that Texas's intent was to create safe districts in which only a candidate of a specific race would be elected.[23] Such overt racial acts constitute an "abridgement of [Blum's] right to participate in the electoral process [in violation] of the Fourteenth Amendment." *Shaw*, 113 S. Ct. at 2847 (Souter, J., dissenting). Plainly, Blum, if no one else, has suffered a particularized harm.

As the district court recognized, Appellees were also harmed by Texas's flagrant disregard of traditional districting principles, which impeded effective citizen participation in politics:

> Traditional, objective districting criteria are a concomitant part of truly 'representative' single member districting plans. Organized political activity takes place most effectively within neighborhoods and communities. . . . When natural geographic and political boundaries are arbitrarily cut, the influence of local organizations is seriously diminished.

Vera, 861 F. Supp. at 1334 n.43.

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[23] *See, e.g.*, Blair Testimony, 12/12/91 Tr. at 108, J.A. 410 (Legislature was trying to "present an opportunity to elect *an African-American*") (emphasis added); Martinez Testimony, 12/12/91 Tr. at 134, J.A. 415.

Non-compact districts interfere with or preclude effective political representation. Compactness enables a district to "retain[] a natural sense of community. . . . [A] district should not be so convoluted that its representatives [can] not easily tell who actually lives within the district." *East Jefferson Coalition v. Jefferson Parish*, 691 F. Supp. 991, 1007 (E.D. La. 1988). "[T]ortuously drawn districts that snake through areas with high concentrations of minorities have no sense of shared interests and no geographical balance." Brief of *Amici Curiae* on behalf of Craig Washington at 16 in *Voinovich v. Quilter*, 113 S. Ct. 1149 (1993). Even though all of the voters in CDs 18, 29, and 30 are located within one major metropolitan area, they retain no "sense of community."

Moreover, the numerous and artificial district boundaries meant that Appellees could not discuss candidates with their neighbors. For example, in the *Terrazas* action, Lee Jackson, a Dallas County judge and a former Texas House member who actively participated in drawing Texas's district lines after the 1980 census, testified that the bizarre shape of CD 30 made it "impossible for citizens in communities to identify with their congressman. . . ." Trial Tr. 12/12/91 at 56; *see also* Weber Report, PL. Ex. 36, J.A. 162; PL. Post-Trial Brief at 8.

Appellees have unquestionably suffered cognizable injuries and individualized harm due to HB 1. These injuries would be redressed by the constitutional reconfiguration of these districts. The Appellees here satisfy the standing requirements for presenting a racial gerrymandering claim under *Hays* and *Miller*.

II. BECAUSE TEXAS WAS PREDOMINANTLY MOTIVATED BY RACE IN FORMULATING AND DRAWING RACIALLY "SAFE" DISTRICTS 18, 29, AND 30, STRICT SCRUTINY APPLIES.

The Equal Protection Clause's "central mandate is racial neutrality in governmental decisionmaking." *Miller*, 115 S. Ct. at 2482. In *Shaw*, this Court reaffirmed that equal protection extends to state redistricting, and prohibits a state from using

"race as a basis for separating voters into districts." *Miller*, 115 S. Ct. at 2485. "Just as the State may not, absent extraordinary justification, segregate citizens on the basis of race in its public parks, buses, golf courses, beaches, and schools . . . , it may not separate its citizens into different voting districts on the basis of race." *Id.* (citations omitted).

This is one of the cases where, as the *Shaw* Court accurately predicted, it is "not . . . difficult at all" to show that strict scrutiny applies. *Id.* at 2826. (In fact, the Department of Justice refuses even to argue that strict scrutiny is inapplicable here.) Although HB 1, like all redistricting legislation, is nominally race-neutral, the direct and indirect evidence in this case overwhelmingly establishes that Texas "segregate[d] the races for purposes of voting, without regard for traditional districting principles." *Shaw*, 113 S. Ct. at 2824. Plaintiffs have shown "through circumstantial evidence of a district's shape and demographics [and] more direct evidence going to legislative purpose, that race was the predominant factor motivating the [Texas] legislature's decision . . ." *Miller*, 115 S. Ct. at 2488.

Presciently applying *Miller's* "predominant factor" test, the District Court found that "the [Texas] legislature's intent was proven directly, through testimony of legislators, the Section 5 preclearance submission, and the use of racial data on the REDAPPL system, as well as inferentially from the makeup of the districts themselves." *Vera*, 861 F. Supp. at 1339 n.47. This determination was not clearly erroneous. Therefore, HB 1 must be subjected to "the same close scrutiny that [the Court] give[s] other state laws that classify citizens by race," and may be upheld only if it is "narrowly tailored to further a compelling state interest." *Shaw*, 113 S. Ct. at 2825; *see also Miller*, 115 S. Ct. at 2482.

A. There Is Overwhelming Direct Evidence That Texas Subordinated All Other Concerns to Its Predetermined Goal of Creating Single-Race Majority Districts.

The testimony of Texas officials in this action, in *Terrazas v. Slagle*, and Texas's own *Narrative* prove that the Texas

"legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, [and] respect for political subdivisions or communities defined by actual shared interests, to racial considerations." *Miller*, 115 S. Ct. at 2481. As the direct evidence establishes, all other considerations took a back seat to overtly racial motivations. *Vera*, 861 F. Supp. at 1338 (rejecting socioeconomic, geographic and other explanations because there is no evidence that such information was relied upon by the legislature, and these assertions are "not persuasive as an explanation for the boundaries of District 30.").

1. Texas Decided To Draw CDs 18, 29, And 30 Along Racial Lines From the Very Beginning Of The Redistricting Process

As discussed above, the fundamental premise of the 1991 congressional reapportionment process was to create selected, safe, single-race majority-minority districts. *See* pp. 8-13, *supra*. "Newspaper articles appearing statewide before and during the redistricting process confirm the view that the Legislature had early on agreed that Dallas County would get a new minority — namely African-American — district." *Vera*, 861 F. Supp. at 1319 n.29. Similarly, Texas's stated goal in Houston was the "maximization of minority voting strength for this geographic area." *Narrative*, J.A. 110.

Despite fierce pressure from House incumbents concerned about their reelection prospects, Texas never wavered from the "underlying assumption" that CDs 18, 29, and 30 would be single-race majority districts. *See* Reynolds Deposition, 6/17/94 Tr. at 111, J.A. 488. *See also* Johnson Testimony, 12/12/91 Tr. at 237, J.A. 432; Martinez Testimony, 12/12/91 Tr. at 137, J.A. 417. The districts were drawn accordingly. *See* Map of Texas U.S. Congressional Districts, 103rd-104th Congresses, PL. Ex. 34(B)(1), J.A. 144. While incumbents may have been allowed to influence the district lines at the margins, any attempt to remove a minority voter from one of the proposed minority districts was

premised upon a corresponding (and generally better performing) minority voter being placed into the single-race majority district.[24]

Forcing incumbents to settle for the nonperforming minorities, while preserving the performing minorities for the racially safe districts, powerfully demonstrates Texas's *primary* motivation. *Vera*, 861 F. Supp. at 1341. In Texas, incumbency protection was clearly a secondary goal to the creation of new districts in which a single racial bloc could safely choose the elected representative. But to the extent that Texas sought to achieve other goals, the battle over these minorities in the absence of voter data illustrates how race was used as a tool in redistricting.

2. Texas's Own Districting Officials Confirmed That Creating Racial Districts Was Texas's "Principal" and "Top" Concern

On several occasions in this action and in the *Terrazas v. Slagle* litigation, the Texas officials who were primarily responsible for redistricting conceded that race was the primary motivating factor in the redistricting process. For example:

- Congresswoman Johnson admitted that her "principal goal" was the creation of safe African-American districts generally and in Dallas County in particular. Johnson Testimony, 12/12/91 Tr. at 231-33, J.A. 426-28.

- Representative Blair testified that the shape of District 30 was the result of efforts "to find stable areas of Black voters." Blair Testimony, 12/12/91 Tr. at 109, J.A. 411.

- Under cross examination at trial, Christopher Sharman admitted that race was a "top" factor in the redistricting process. "[i]t was one of the major reasons." Sharman Testimony, 6/30/94 Tr. at 108, J.A. 522.

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[24] For example, in Dallas, Eddie Bernice Johnson admitted that incumbents were only allowed to "capture" minority voters if better "performing" minority voters were first placed into CD 30. Johnson Testimony, 12/12/91 Tr. at 234-35 & 248-49, J.A. 429-30 & 435-36; *see also* DOJ Brief at 9, 11.

- Carl Reynolds admitted that creating three new minority districts "was an underlying assumption in all [of Texas's] work." Reynolds Deposition, 6/17/94 Tr. at 111, J.A. 488.

With such concessions by Texas officials, the district court was easily able to find the record "replete with proof that the legislature intended to devise four majority-minority Congressional seats." *Vera*, 861 F. Supp. at 1337.

B. The Districts' Bizarre Shapes and Precise Racial Cuts, As Well As Texas's Disregard For Traditional Districting Principles, Demonstrate That Texas Was Primarily Motivated By Race In Drawing CDs 18, 29, And 30

An examination of the maps and a glance at the number of split precincts proves inferentially what the testimony proves directly: that Texas subordinated all other traditional districting principles to its overriding racial goals. The evidence establishes that the overall make-up of these districts can only be explained based on the race of their inhabitants.[25]

The bizarre shapes of CDs 18, 29, and 30 thus provide "persuasive circumstantial evidence that race for its own sake, and not other districting principles, was [the] legislature's dominant and controlling rationale in drawing district lines." *Miller*, 115 S. Ct. at 2480-81. Texas has "concentrate[d] a dispersed minority population in a single district by disregarding traditional districting principles such as compactness, contiguity, and respect for political subdivisions." *Shaw*, 113 S. Ct. at 2827. On this basis alone, Appellees meet their burden of presenting *prima facie* evidence that Texas engaged in racial gerrymandering. *See Shaw v. Hunt*, 861 F. Supp. at 430-31, 450 n.44.

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[25] Plaintiffs need not prove that every point on the district's borders is based solely on race — only that the predominant motivation for the district's make-up was racial. *See, e.g., Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 265-66 (1977) (plaintiff not required to show that the challenged action "rested solely on racially discriminatory purposes . . . proof that a discriminatory purpose has been a motivating factor in the [legislature's] decision [is sufficient]"); *Hays v. State of Louisiana*, 839 F. Supp. 1188, 1202 n.46 (W.D.La. 1993), *vacated on other grounds*, 114 S.Ct. 2731 (1994).

The shapes of the challenged districts are "so contorted as to permit no other conclusion than that [they were] drawn along racial lines . . . those lines are clear — if circumstantial — evidence that the legislature 'purposefully distinguish[ed] between voters on the basis of race.' " *Johnson v. Miller*, 864 F. Supp. 1354, 1369 (S.D. Ga. 1994) (quoting *Shaw v. Reno*, 113 S. Ct. at 2826), *aff'd*, 115 S.Ct. 2475 (1995).

1. CDs 18, 29, And 30 Are Among The Most Bizarrely Shaped Congressional Districts In The Country And Are Extraordinarily Non-Compact And Non-Contiguous

CDs 18, 29, and 30 are among the least compact congressional districts in the United States. Specifically, CDs 18 and 29 have the least regular borders in the Nation. Pildes & Niemi *supra* note 13, at 565 (ranking CDs 18 and 29 as tied for first with one other district as those with the least regular borders in the country).[26] Texas CD 30 is similarly determined to be among those districts with the least regular borders. *Id.* In addition, CDs 18, 29, and 30 are well below the national median when measuring compactness. *Id.*[27]

"The result of this line drawing appears utterly irrational — Unless one factors in the overlap between these districts and the racial makeup of their underlying populations." *Vera*, 861 F. Supp. at 1340. In fact, on several occasions during cross-examination, Christopher Sharman admitted that district lines which he had previously characterized as being drawn for political purposes were inconsistent with the maps of voter registration, but were consistent with the racial demographics of the region.[28]

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[26] For a description of the means by which compactness is measured and the scores of these districts, *see* Appellees' Motion to Affirm at 18 n.24.

[27] That a district is literally contiguous is irrelevant. A state can draw a contiguous district around any group of voters, no matter where each voter lives. *See Marylanders for Fair Representation, Inc. v. Schoefer*, 849 F. Supp. 1022, 1052 n.38 (D. Md. 1994).

[28] *See, e.g.*, Sharman Testimony, 6/30/94 Tr. at 114, J.A. 529 ("Yes, we picked up [precinct] 203 primarily because it had Hispanics"); *id.* at 117, J.A. 531-532.

In District 18, for example, many narrow corridors, wings or fingers reach out to enclose Black voters while excluding Hispanic "residents" from the "many narrow corridors." Pildes & Niemi, at 556. District 29's border is similarly characterized by fingers reaching out to enclose Hispanics.

Texas contends that the bizarre shape of CD 30 in Dallas County is the result of trading Democratic voters among powerful Democratic incumbents. *See* Texas Brief at 14. This argument is not supported by either the maps or the trial testimony. For example, a close examination of the "tendril" that reaches into Collin county shows that the boundaries of CD 30 perfectly encompass the minority population (*see* Pl. Ex. 34H17, attached hereto), even though several precincts in that area contain *Republican* majorities. (*See* Attachment State's Ex. 9B, attached hereto.)

Moreover, in the *Terrazas* litigation, then-state Senator Johnson testified that the "fingers" of CD 30 that extended into "north Dallas County, and even into southern Collin County[,]" did so in an effort to "bring into the district" "black migration areas." Johnson Testimony, 12/12/91 Tr. at 234-35, J.A. 430; *see also id.* at 248, J.A. 435. Christopher Sharman admitted that race was "more of a factor" in District 30's encroachment into Collin County. Sharman Testimony, 6/30/94 Tr. at 117, J.A. 532. Based on this evidence, the district court properly ruled that race, not incumbency protection, was Texas's primary motivation in creating CD 30. *Vera*, 861 F. Supp. at 1339.[39] This determination was not clearly erroneous.

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[39] The United States urges this Court to accept Christopher Sharman's testimony that, despite the lack of information about political affiliation below the precinct level, he determined the partisan makeup of these areas by "driving through" them looking, in the summer of 1991, for Ann Richards campaign signs. *See* DOJ Brief at 5. Ms. Richards was elected Governor of Texas in November of 1990. On cross-examination, Mr. Sharman conceded that Ann Richards campaign signs would have been difficult to find by the summer of 1991. He offered, however, that it "[c]ould have been Dukakis" signs for which he was looking. *See* Sharman Testimony, 6/30/94 Tr. at 81-82, J.A. 519.

Similarly, a review of the Harris County maps and testimony elicited at trial reveal that District 18 and 29's precise cuts are along racial and not political lines. *See* Pl. Ex. 34H8 & 34H49; State's Ex. 9A(1) (attached hereto). For example, Roman Martinez testified that, in Harris county, "it was particularly necessary to split VTDs in order to capture pockets of Hispanic residents for the new district." *Vera*, 861 F. Supp. at 1340-41; *see also supra note* [8] (Sharman Testimony).

The Appellants urge this Court to ignore the lack of compactness in assessing whether strict scrutiny applies; instead, they repeatedly denigrate as subjective and unduly activist a judicial inquiry into whether districts are compact. The federal courts have been undertaking such an analysis for years, however, in the context of Section 2 claims under the Voting Rights Act, with reasonably predictable and consistent results. *See, e.g., Growe v. Emison*, 113 S. Ct. 1075, 1084 (1993). Moreover, given the fundamental role that geography plays in our politics, and in creating real communities of interest, ignoring the lack of compactness would be closing one's eyes to critical evidence that non-traditional, constitutionally improper criteria were used to create these congressional districts. *See Vera*, 861 F. Supp. at 1334 n.43; *see also Shaw v. Hunt*, 861 F. Supp. at 430-31 & 450 n.44.

Alternatively, the State and Lawson/Reyes Intervenors essentially contend that any district drawn within an urban area is sufficiently compact. This position is untenable. If anything, the urban context of these districts provides additional evidence of impermissible racial gerrymandering. As the district court below stated,

> all parties and their expert witnesses agreed, compactness must be a relative measure for Legislative districts. . . . In a major urban county, compactness makes little sense if considered in terms of geographic sprawl alone, but it seems far more probative when viewed in terms of a city's or county's neighborhoods, geopolitical subdivisions, and business location. Adjusting the sense of compactness to the complexity and population density of the urban landscape demonstrates that Districts 18 and

> 29 are not compact at all. Their contorted shapes are the antithesis of compactness.

Vera, 861 F. Supp. at 1341.

Racial gerrymandering is as offensive in an urban context as it is in a rural one. Redistricting can do violence to existing political subdivisions even when the district is entirely within one large political subdivision, such as a county. *See, e.g., Growe*, 113 S. Ct. at 1083-85; *Gomillion v. Lightfoot*, 364 U.S. at 341. Thus, the extraordinarily non-compact natures of CDs 18, 29, and 30 strongly suggest that Texas has engaged in invidious discrimination in formulating its reapportionment plan.

2. CDs 18, 29, and 30 are Constructed Block By Block Along Precise Racial Lines

As the *Miller* court emphasized, it is not just the bizarre shape of a district, but also the precision of its racial cuts, that demonstrate that race was the primary factor in constructing the district. In Texas, as in Georgia, "when [the districts'] shape[s] [are] considered in conjunction with [their] racial and population densities, the story of racial gerrymandering seen by the District Court becomes clearer." *Miller*, 115 S. Ct. at 2489.

> [A]ll one must do is take a . . . map of the State of [Texas] shaded for race, shaded by minority concentration, and overlay the districts that were drawn by the State of [Texas] and see how well those lines adequately reflect[] black voting strength.

Johnson v. Miller, 864 F. Supp. at 1377. *See* Attachments. Thus, it is not just a district's appearance, but its "appearance in combination with certain demographic evidence" that give rise to an equal protection claim. *Miller*, 115 S. Ct. at 2486.[30]

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[30] The Lawson/Reyes Appellees criticize the district court for "ignoring the highly irregular shapes of majority-white congressional districts" while invalidating CDs 18, 29, and 30. *See* Lawson/Reyes Brief at 37. Yet, even assuming that certain of Texas's majority-Anglo districts are bizarrely shaped, the absence of precise racial cuts corresponding to the bizarre shapes suggests that factors other than race were at work in the formation of these districts.

The Lawson/Reyes Intervenors also contend that CDs 18, 29, and 30 are "integrated," not "segregated" districts. Lawson/Reyes Brief at 15 n.30. In support of this contention, Lawson/Reyes stress that seven Texas congressional districts are more than 80% Anglo. *Id.* This argument is specious. Four of the six Anglo-dominated districts abut Districts 18, 29, or 30, and thus were drained of their multiracial character as a result of Texas's race-based districting. *See* PL. Ex. 34(B)(1), J.A. 144. Such redistricting plans sap these districts of their minority voting strength, "leaving elected officials in these districts with little reason to represent minority viewpoints." Brief of *Amicis Curiae* on behalf of Craig Washington, *supra* page 29, at 16.

As discussed above, and as the attached maps reveal, the districts' outer boundaries do not follow either natural geographical features or existing political boundaries. *See* pp. 13-17, *supra*. Rather, they zig-zag, widen and narrow with geographic irrationality but racial precision. The borders are explainable by one factor and one factor only — the race of the residents who are included and excluded from the districts. *See Vera*, 861 F. Supp. at 1323, 1336, & 1339-40. The high correlation between the district lines and the racial populations is itself sufficient to demonstrate that race was Texas's predominant motive in redistricting.

3. The Districts Fail To Respect Existing Political Subdivisions And Established Communities Of Interest

CDs 18 and 29 divide 16 municipalities, while CD 30 splits 21.[31] Plainly, these districts fail to accommodate existing political subdivisions. Although the Appellants now seek to describe similarities among the inhabitants of these bizarre districts, *see* Texas Brief at 20-21 and Lawson/Reyes Brief at 11-14, the lower court expressly found that these considerations were not before the legislature, and rejected *post hoc* attempts to provide

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[31] *See* Report of Districts Showing Cities and Census Designated Places by District and by County, PL. Ex. 34T; *see* Appellees' Motion to Affirm, attachments 1 and 5.

alternate explanations for these district lines. *Vera*, 861 F. Supp. at 1323. Again, this determination was not clearly erroneous.

In fact, these districts violate traditional districting principles even under the standards employed by the dissenters in *Miller*. Justice Ginsburg urged that because the district at issue in *Miller* largely followed precinct lines, it was drawn consistent with traditional districting principles. *See Miller*, 115 S. Ct. at 2503 n.8 (Ginsburg, J., dissenting). Yet, Texas's redistricting plan splits an extraordinary number of precincts. *See* pp. 14-17, *supra*. Then-state Senator Johnson confirmed this disregard for political subdivisions when she explained that she was under the (mistaken) impression that "we saw in the Law where it prohibited using political subdivisions as a barrier." Johnson Testimony, 12/12/91 Tr. at 236, J.A. 431.

These split precincts provide not only some of the best evidence that Texas was driven by race in creating CDs 18, 29, and 30, but are also the cause of many of the most severe injuries to the political process done by the State's racial gerrymandering. *See Vera*, 861 F. Supp. at 1334 n.43 & 1339.

C. Regardless Of Its Motivation, Race-Conscious Government Decision-Making Triggers Strict Scrutiny

"A racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification." *Shaw*, 113 S. Ct. at 2825 (1993) (quoting *Personnel Administrator v. Feeney*, 442 U.S. 256, 272 (1979)). Neither of the two justifications proferred by the Appellants — that the racial classifications are benign or that they are justified by incumbency protection — are sufficient to evade strict scrutiny.

1. Racial Classifications, Even Allegedly "Benign Ones," Are Inherently Suspect.

Texas's race-based districting must be subjected to strict scrutiny. In *Gomillion v. Lightfoot*, 364 U.S. 339, this Court properly held that the Fourteenth Amendment precluded Alabama from constructing an "uncouth" twenty-eight sided city map of Tuskegee in order to exclude African-Americans. Here, Texas has created far more "uncouth" districts in order to

include African-Americans or Hispanics, and to exclude other racial groups. Just last Term, this Court reaffirmed that "the level of scrutiny [under the Equal Protection Clause] does not change merely because the challenged classification operates against a group that historically has not been subject to governmental discrimination." *Adarand Constructors, Inc. v. Pena*, 115 S. Ct. 2097 (1995) (quoting *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 274 (1986)). The Equal Protection Clause thus requires that, as in *Gomillion*, these racially constructed districts be strictly scrutinized.

Appellants claim that this case is different, arguing that here the "fencing in" is being done at the behest of minority groups. As this Court has held, however, "the creation of majority-minority districts [ ]does not invariably minimize or maximize minority voting strength"; in fact, "[c]reating majority-black districts necessarily leaves fewer black voters and therefore diminishes black-voter influence in predominately white districts." *Voinovich v. Quilter*, 113 S. Ct. at 1156. Realizing this, not all African-Americans or Hispanics, as opposed to African-American and Hispanic politicians, favor this kind of "preference." *See, e.g.*, Swain, *Black Faces, Black Interests* ix, 198-205, 207. In addition, constitutional doctrines do not turn on the supposed desires of the individuals who may benefit from, or be burdened by, a racial classification.

In any event, this Court has now conclusively established that even purportedly benign racial classifications must be subjected to strict scrutiny because "'it may not always be clear that a so-called preference is in fact "benign."' *Adarand*, 115 S. Ct. at 2100 (citations omitted). Increasingly, so-called "benign" racial classifications are being viewed as a "contradiction in terms. . . . To the person denied an opportunity or right based on race, the classification is hardly benign." *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 609 (1990) (O'Connor, J., dissenting). Regardless of their race, the plaintiffs in this action are entitled to equal protection under the law. Accordingly, CDs 18, 29, and 30 must be subjected to strict scrutiny.

2. Protecting Incumbents By Assigning Voters to Congressional Districts Based on Race Is Subject to Strict Scrutiny

The lower court properly determined that Texas's primary motivation in drawing CDs 18, 29, and 30 was creating non-compact single-race majority-minority districts. *See Vera*, 861 F. Supp. at 1334. Indeed, Texas has offered no other explanation for the racially dominant nature of these districts. And even if Texas's motivation in establishing the precise boundaries was to protect incumbents, the state's use of race to accomplish its goal requires the strict scrutiny of this Court. As the district court said: "The State cannot have it both ways. It cannot say that African-American voters are African-American when they are moved into District 30, but they are merely 'Democrats' when they are deliberately placed in a contiguous district for the purpose of bolstering the re-election chances of other Democrats." *Id.* at 1338-39.

Thus, the best constitutional face the State can put on its argument is that Texas served the goal of incumbency protection by using "race as a proxy." *Miller*, 115 S. Ct. at 2487. But both *Miller* and *Shaw* foreclose Texas's essential argument that it may assume, without evidence, "that members of the same racial group — regardless of their age, education, economic status, or the community in which they live — think alike, share the same political interests, and will prefer the same candidates at the polls." *Shaw*, 113 S. Ct. at 2827; *see also Miller*, 115 S. Ct. at 2486. If not *per se* unconstitutional, such race-based allocation and segregation of voters to advance the reelection interests of incumbents in adjoining districts must be subjected to the most careful scrutiny.[8]

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[8] *United Jewish Organizations of Williamsburgh ("UJO") v. Carey*, 430 U.S. 144 (1977), is inapposite because here Texas was under no legal compulsion to draw the districts along racial lines as it did. Moreover, *UJO* involved the drawing of compact, majority non-white districts. Thus, unlike the case here, race did not override all traditional districting considerations.

What is more, Texas's argument that incumbents may be protected by racial gerrymandering proves too much: a state may not protect incumbents through unconstitutional means. The poll tax and white primary, both of which are part of Texas's unfortunate history of racial discrimination, *see, e.g., Smith v. Allwright*, 321 U.S. 649 (1944) (white primary), and *Texas v. United States*, 384 U.S. 155 (1966) (per curiam) (poll tax), protected incumbents. They are unconstitutional nonetheless.[33]

Essentially, the State and Lawson/Reyes Intervenors contend that the existence of an additional, non-racial justification of incumbent protection permits Texas to segregate voters by race without being subjected to strict scrutiny. This sweeping contention, if accepted, would negate all *Shaw* claims, as any state "could always trot out some other traditional districting principle [as incumbency protection was here] minimally served by the [district] shape in question." *Johnson v. Miller*, 864 F. Supp. at 1374 (citation omitted).[34] If all a state had to do to justify race-based redistricting was show that district borders also were responsive to political concerns, no voter could ever successfully challenge racial redistricting. *Miller* and *Shaw* require that this argument be rejected.[35]

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[33] Recognizing the inappropriate nature of Texas's incumbency protection argument, the district court observed that "incumbent protection is a valid state interest only to the extent that it is not a pretext for unconstitutional racial gerrymandering." *Vera*, 861 F. Supp. at 1336.

[34] Under the State's view, for example, any nominally contiguous district would defeat a *Shaw* claim. A state could always show that it had taken at least one other factor — contiguity — into account. *See also Shaw v. Hunt*, 861 F. Supp. 408 (E.D.N.C. 1994).

[35] The term "incumbent protection" has been consistently misconstrued by the Appellants in this case. This Court has never condoned incumbent protection in which "the representatives have selected the people," instead of "the people select[ing] their representatives," *Vera*, 861 F. Supp. at 1334, as a legitimate — let alone compelling —redistricting criterion that would justify an invidious racial classification. *See also* Appellees' Motion to Affirm at 22-24.

III. TEXAS DID NOT HAVE A COMPELLING GOVERNMENTAL INTEREST IN RACIALLY GERRYMANDERING DISTRICTS 18, 29, AND 30

Given that Texas constructed CDs 18, 29, and 30 along racial lines, HB 1 can only be upheld upon an "extraordinary justification." *See Shaw v. Reno*, 113 S. Ct. at 2825. While strict scrutiny is not "fatal in fact," *Adarand*, 115 S. Ct. at 2101 (citation omitted), "[t]o satisfy strict scrutiny, the State must show that [the law it defends] furthers a compelling state interest by the least restrictive means practically available." *Bernal v. Fainter*, 467 U.S. 216, 227 (1984).

HB 1 does not survive strict constitutional scrutiny. Even assuming that compliance with the Voting Rights Act can constitute a sufficiently compelling state interest to justify race-based districting, the Voting Rights Act did not require Texas to create any of these racial districts. Moreover, Texas cannot establish any other compelling governmental interest to draw congressional districts along racial lines. Accordingly, HB 1 must be invalidated.

A. The Voting Rights Act Did Not Require Texas to Construct Three Single-Race Majority Districts

As the Court made clear last Term, "Congress' exercise of its Fifteenth Amendment authority even when otherwise proper still must 'consist with the letter and spirit of the constitution.'" *Miller*, 115 S. Ct. at 2493 (quoting *South Carolina v. Katzenbach*, 383 U.S. at 326).[36] The Voting Rights Act does not trump the Constitution; thus, any race-based decisionmaking that the Voting Rights Act may require must be precisely co-extensive with the constitutional requirement that such decisions be narrowly tailored to serve a compelling governmental interest.

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[36] The Court has never squarely addressed the constitutionality of amended Section 2. *See Johnson v. DeGrandy*, 114 S. Ct. 2647, 2665 (1994) (Kennedy, J., concurring). Because the Voting Rights Act clearly did not require Texas to draw these bizarre, single-race majority-minority districts, this Court need not address the constitutionality of Section 2 in this case either.

The State bears a heavy burden of justifying racial districts. *See Shaw*, 113 S. Ct. at 2825, 2829-32. This burden is not satisfied merely by showing that such districts are permitted by the Voting Rights Act; a state must show that race-based districting was *required* by the Voting Rights Act, and that the districts are consistent with the Constitution. *See, e.g., Johnson v. Miller*, 864 F. Supp. at 1381.

Even if this Court were to entertain Texas's *post hoc* justification for its race-based decision-making, Texas cannot demonstrate a remedial interest here in constructing bizarre, non-compact, single-race majority districts. These districts were not required to avoid retrogression under Section 5 of the Voting Rights Act. Nor are they compelled by Section 2, which, at most, may require the creation of compact districts. The admittedly non-compact nature of these districts establishes that they are not required by the Voting Rights Act.

1. These districts were not necessary to avoid retrogression.

Texas has conceded that Section 5 of the Voting Rights Act, which requires a state only "to preserve extant 'minority' districts," *Vera*, 861 F. Supp. at 1342 n.54 (citing *Beer*, 425 U.S. 130, 141 (1976)), "did not require the creation of new minority Districts 29 and 30." *Id.* Nor did Section 5, which guards against "*retrogression* in the position of racial minorities with respect to their effective exercise of the electoral franchise," *Beer*, 425 U.S. at 141 (emphasis in original), require Texas to construct CD 18 along racial lines.[37]

This Court has never analyzed retrogression under Section 5 where a single minority group constituted less than a majority. See, *e.g.*, *Miller*, 115 S. Ct. at 2481; *Beer v. United States*, 425

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[37] Texas cannot show that Districts 18, 29, and 30 were necessary under the "purpose prong" of Section 5. That component of Section 5 is violated only if "the new apportionment itself so discriminates on the basis of race or color as to violate the Constitution." *Beer*, 425 U.S. at 141. There is no evidence that Texas purposefully discriminated against minorities in enacting HB 1. *See Terrazes*, 821 F. Supp. at 1162.

U.S. at 141. Because African-Americans never made up a majority of CD 18, Section 5 should not be read as requiring the preservation of CD 18 as a 41% Black opportunity district to avoid retrogression. *See* Texas Brief at 25-28.

In addition, it is difficult to see the logical stopping point if the non-retrogression principle were extended to non-single-race majority-minority districts. Theoretically, Section 5 could then apply to every state and local district in all the covered jurisdictions, no matter how small the minority population is in each district. Requiring states to preserve the pre-existing minority percentages in all of the districts within their borders — regardless of how small those percentages were — would make it virtually impossible for states to redraw their district boundaries.[38]

In sum, Section 5 did not require Texas to create any of the race-based districts at issue.[39]

2. Section 2 of the Voting Rights Act Did Not Require Texas to Racially Gerrymander CDs 18, 29, and 30

This Court has rejected the use of race in governmental decisionmaking unless the governmental actor determines in

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[38] Texas contends that Section 5 required the state to "maintain CD 18 as an African-American opportunity district" even though large numbers of minorities during the 1980s moved out of downtown Houston. *See* Texas Brief at 27. But Texas cites absolutely no authority for the proposition that Section 5 requires states to preserve minority districts when the minority populations move away. To the contrary, states are not obligated to maintain minority districts where the minority population within the district has moved away. *Cf. Pasadena v. Bd. of Educ.*, 427 U.S. 424, 435-36 (1976).

[39] Even if Section 5 were to apply to CD 18, it certainly did not require Texas to *increase* the black population in CD 18 from 41% to over 50% to avoid retrogression. Texas itself stresses that prior to HB 1, African-Americans were able to elect their candidates of choice in CD 18 100% of the time for over two decades. *See* Texas Brief at 25 n.21 (describing CD 18's "distinguished place in the history of African-American politics in Texas"). Texas's unfounded claim that this hike in African-American voting strength is necessary due to the breakdown in cross-over voting between Blacks and Hispanics lacks factual and legal support.

advance that only the use of race can remedy previously identified racial discrimination. *See City of Richmond v. Croson*, 488 U.S. 469, 500-01, 504-06 (1989). Here, Texas failed even to ask the essential questions. It did not first determine whether its traditional reapportionment process would have produced racially discriminatory results, thus violating the Voting Rights Act. It did not assess whether there is any sufficiently compact and cohesive group of protected minorities that is subject to bloc voting. Nor did it assess whether the politicial process is closed to such individuals. Had it done so, Texas would have recognized that no problem exists that necessitates the use of race as a remedy.

Instead, Texas decided at the outset of the redistricting process to construct three single-race majority districts in Dallas and Houston. Such an approach violates the Constitution. When a state "chooses to employ a suspect classification, it cannot rest upon a generalized assertion as to the classification's relevance to its goals . . . A governmental actor cannot render race a legitimate proxy for a particular condition *merely by declaring that the condition exists.*" *Id.* at 500 (emphasis added) (citations omitted). *See also id.* at 504-06. Rather, race-based actions must be based on "a correct reading of the [Constitution or] the statute." *Miller*, 115 S. Ct. at 2490.

Requiring that the State be "right" and not just reasonable is appropriate given the dangers involved in governmental decision-making based on race. *See, e.g., Croson*, 488 U.S. at 493. There is no good-faith exception to the Equal Protection clause. Creating one here would do immeasurable damage to the anti-discrimination principle embedded in the Fourteenth Amendment.

Appellants claim that they should not have to wait to be sued before taking race into account, and that the State should not be forced to make a case against itself. *See* Texas Brief at 35-36. Although a state may not be required to wait to be sued before remedying a constitutional or statutory violation, Texas cannot possibly be "correct" in concluding that race-based districting is necessary if it does not first try to redistrict according to its customary process. Only if the results of that process reveal

racially discriminatory results could a State begin to make a case that it was necessary to use race to remedy identifiable instances of racial discrimination.[40] Nor can the State rely on outside actors, such as the Department of Justice, and then claim a good-faith belief that race-based decision-making was necessary.[41]

Insisting that states make a genuine, good-faith effort to assess whether a problem exists before using race to remedy that problem not only comports with this Court's caselaw and common sense; such a requirement also gives guidance to state legislatures and would help courts assess where their intervention may be warranted.

Because Texas never undertook such an effort, Texas cannot possibly show that Section 2 required the construction of these bizarre, single-race majority districts. At most, Section 2 may compel the creation of *compact* majority-minority districts. Because these districts are not compact, and the *Gingles* preconditions are not otherwise present, Section 2 is irrelevant.

Moreover, Texas cannot show that "under the totality of the circumstances," Hispanics and African-Americans in modern Texas have been denied an "equal opportunity" to "participate in the political process and to elect representatives of their choice." 42 U.S.C. Section 1973b. There is simply no proof that these minorities have been "essentially shut out of the political process."[42] As a result, Section 2 cannot justify these race-based districts.

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[40] Plaintiffs' expert (Dr. Weber) drew hypothetical congressional districts in accordance with traditional districting principles that did not take race into account. *See* Weber Testimony, 6/28/94 Tr. at 133-34.

[41] *See Miller*, 115 S. Ct. at 2491 ("We do not accept the contention that the State has a compelling interest in complying with whatever [Voting Rights Act] preclearance mandates the Justice Department issues."); *see also Hays I*, 839 F. Supp. at 1217.

[42] *Cf. Davis v. Bandemar*, 478 U.S. 109, 139 (1986) (describing vote-dilution standards under the Fourteenth Amendment); *see also id.* at 151-52 (O'Connor, J., concurring in the judgment) (same).

a. The *Gingles* "Pre-conditions" Are Absent

The *Gingles* "preconditions" "never can be assumed, but specifically must be proved in each case." *Shaw*, 113 S. Ct. at 2830 (citing *Growe v. Emison*, 113 S. Ct. 1075, 1076 (1993)). Texas has failed to prove that all three *Gingles* "preconditions" are present. None of these bizarre, admittedly non-compact districts satisfy the first *Gingles* factor — that each minority group be "sufficiently large and geographically compact to constitute a majority in a single-member district." *Gingles*, 478 U.S. at 50-51.[43] Moreover, there is ample evidence that the third *Gingles* factor — bloc voting by Anglos — is absent in both Dallas and Houston.

(1) Compactness.

The Appellants admit, and an independent review of Harris County's Black and Hispanic residential housing patterns confirms, that neither CD 18 nor CD 29 satisfies the first *Gingles* precondition — *i.e.*, compactness. The United States acknowledges (as does Texas) that racially integrated housing patterns in Harris County made it impossible for Texas to draw compact majority-Black and majority-Hispanic congressional districts in Houston at the same time. *See* pp. 13-14 *supra*. Thus, Texas was only able to create a Black- and an Hispanic-majority district by drawing extraordinarily non-compact districts that split hundreds of neighborhoods and precincts and splintered established communities of interest. *See* PL. Exs. 34(B)(1), 34(H)(8), 34(H)(9), J.A. 144, 151-52; *see also* pp. 14-15, *supra*. Similarly, the district that was drawn in Dallas was so extraordinarily non-

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[43] The Lawson/Reyes Interveners contend that the first *Gingles* factor is satisfied so long as "reasonably compact" districts are drawn "with a sufficiently large minority population to elect candidates of its choice" — even if the minority population does not constitute a majority. *See* Lawson/Reyes Brief on the Merits at 48. This contention runs counter to lower federal court rulings strictly requiring minorities to constitute a majority in a compact district. *See, e.g.*, *Hastert v. State Bd. of Elections*, 777 F. Supp. 634, 654 (N.D. Ill. 1991) (eliminating the *Gingles* majority-minority requirement would "likely open a Pandora's box of marginal Voting Rights Act claims by minority groups of all sizes").

compact that it could not possibly be required by Section 2, consistent with the Constitution. *See* PL. Exs. 34(B)(1), 34(B)(3), 34(D)(2), J.A. 144, 146, 148; *see also* pp. 15-17, *supra*.

Appellants seek to circumvent the impossibility of drawing compact single-race majority districts in Harris County and Dallas counties by arguing that *Gingles* only requires a determination of whether a compact majority-Black or a majority-Hispanic district could be drawn theoretically in isolation. *See* Texas Brief at 28-29.[44] This points out the limits of applying conventional Section 2 analysis in tri-racial circumstances. *See DeGrandy*, 114 S. Ct. at 2663.

More importantly, to contend that the compactness requirement may be abandoned in actual fact because a compact African-American and a compact Hispanic district may be drawn — although not both at the same time — is illogical and wrong. Here, as in all racial gerrymandering cases, because the State contends that Section 2 required it to draw *these* districts, the *Gingles* analysis must necessarily turn on the districts the State actually drew. It would be illogical to make a hypothetical assessment about what a Section 2 district might look like. Such a hypothetical analysis would have nothing to do with whether the districts as drawn were required by the Voting Rights Act.

"The first *Gingles* criterion is that the minority population are sufficiently numerous and geographically compact to form a majority in a single-member district . . . [and] *presupposes legislative districts that have geographic integrity and satisfy traditional districting standards.*" *Vera*, 861 F. Supp. at 1342-43 n.54 (citing *DeGrandy*, 114 S. Ct. at 2655) (emphasis added). Because none of the districts at issue is a compact

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[44] Appellees seriously doubt that a compact Hispanic-majority district could be created in Harris County under any circumstances, even if no Black-majority district were drawn. *See* Map of Harris County Hispanic Population Distribution by VTD, Plan C657, PL. Ex. 34H9, J.A. 152 (showing dispersed Hispanic housing patterns). Appellees' doubts are reasonable, considering that 45.8% of all Hispanics of voting age in Houston are non-citizens. *See Campos*, 1995 WL 478151 at *3.

majority-minority district, the first *Gingles* "precondition" is absent.[45]

(2) Racial Bloc Voting

The Fifth Circuit recently ruled *en banc* that, as a matter of law, the third *Gingles* precondition — racial bloc voting by Anglos — was not present in Harris County during the 1980s and 1990s. *See League of United Latin Amer. Citizens ("LULAC") v. Clements*, 999 F.2d 831, 883 (5th Cir. 1993) (ruling that "party, not race, was the decisive factor in determining electoral outcomes"), *cert. denied*, 114 S. Ct. 878 (1994). Moreover, just three months ago, the United States District Court for the Southern District of Texas reached the same conclusion. *See Campos v. City of Houston*, 1995 WL 478151 at *4-5 (S.D. Tex. July 31, 1995) (finding that Anglos voted for Hispanics about 50% of the time).[46] Similarly, the Fifth Circuit similarly ruled as a matter of law that there is no racial bloc voting in Dallas County. *LULAC*, 999 F.2d at 877, *cert. denied*, 114 S. Ct. 878 (1994) (finding that white cross-over voting for Black judicial candidates in Dallas County during the 1980s and 1990s was as high as 77% and 61%); *see also* PL. Ex. 14K, J.A. 137. Given the degree of Anglo cross-over voting in Harris and Dallas counties, the third *Gingles* precondition is absent.[47]

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[45] Moreover, there was no evidence in the record that a compact majority-black congressional district *could* have been created in Dallas County. In an effort to show that the first *Gingles* precondition is present, at trial Texas's counsel constructed an allegedly "compact" majority-Black district in Dallas. *See* Map of Dallas County Proposed Congressional Districts, Summary Sheets, State Ex. 12C, J.A. 201. Yet, this district includes several distinct appendages, *id.*, and Blacks do not constitute a majority within it. *Id.* at 202.

[46] *See also* African-American Success in Texas Legislative Districts by Percentage Black, 1983-1992, PL. Ex. 14K, J.A. 137.

[47] Appellants rely on *Williams v. City of Dallas*, 734 F. Supp. 1317 (N.D. Tex. 1990), for the proposition that racial block voting persists in Texas today. *See* Texas Brief at 31. In *Williams*, the court adopted the extreme view that "a minority candidate elected with overwhelming white support — even an excellent at-large member, like Al Gonzalez — does not

(footnote continues)

Moreover, even when a minority group's preferred candidate is defeated, *Gingles* requires proof that a white racial voting bloc systematically denies minorities an opportunity to elect candidates of their choice. *See Gingles*, 478 U.S. at 50-51 (requiring proof that white racial block voting "*usually* [] defeat[s] the minority's preferred candidate") (emphasis added) (citations omitted). Given the degree of racial cross-over voting that takes place in the Texas of the 1990s,

> there are communities in which minority citizens are able to form coalitions with voters from other racial and ethnic groups, having no need to be a majority within a single district in order to elect candidates of their choice. Those candidates may not represent perfection to every minority voter, but minority voters are not immune from the obligation to pull, haul and trade to find common political ground.

DeGrandy, 114 S. Ct. at 2661.

Because Texas cannot show that the *Gingles* preconditions required it to draw the districts it actually drew, it cannot prove that the Voting Rights Act justifies its race-based determinations.

(footnote continued)

have the confidence of the black or Hispanic communities." *Id.* at 1327. This view is similar to those of certain voting rights scholars who believe that African-Americans who are elected by whites "are typically not 'authentic,' which is to say they are not 'politically, psychologically, and culturally black.'" *Tyranny of the Majority? Taking Issue with Lani Guinier*, The News and Observer, Sept. 17, 1995. This Court has emphatically rejected such a view. *See, e.g., Shaw*, 113 S. Ct. at 2818; *Miller*, 115 S. Ct. at 2485-86.

b. In Modern Texas, Hispanics and African-Americans Are Not Denied An "Equal Opportunity" To "Participate In The Political Process And To Elect Representatives Of Their Choice"

In any event, "under the totality of the circumstances," minorities in modern Texas have not been denied an "equal opportunity" to "participate in the political process and to elect representatives of their choice." 42 U.S.C. Section 1973b. Those who drafted the 1982 amendments to the Voting Rights Act emphasized that amended Section 2 "protects the right of minority voters to be free from election practices, procedures or methods, that *deny them the same opportunity to participate in the political process as other citizens enjoy.*" S. Rep. No. 1992, 99th Cong., 2nd Sess. (1982) at 28 [hereinafter 1982 Senate Report] (emphasis added). Senator Dole, who authored compromise Section 2 language that ultimately gained final passage, stressed that under amended Section 2, "the issue to be decided is whether members of a protected class enjoy equal access. I think that is the thrust of our compromise: equal access, whether it is open; equal access to the political process, not whether they have achieved proportional election results.") *Id.* at 233 (Statement of Sen. Dole).[48]

"[N]o supporter of the Dole 'compromise' took issue with this interpretation of the meaning and purpose of the amendment." 1982 Senate Report at 230. In fact, numerous Senators echoed that amended Section 2 was "access-related," as distinct from "outcome-related." Thus, there was a consensus that

> [Amended Section 2 guarantees] voter *access* to the polls. Whether a particular voter does or does not have such access depends upon 'the totality of the circumstances' test — a test that is certainly an implicit ingredient of

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[48] The "Dole Compromise" provided that "nothing in [amended Section 2] establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." 42 U.S.C. § 1973(b) (1988). *See 1982 Senate Report* at 230 (" 'the compromise provides that the issue to be decided is whether political processes are equally open, thus placing the focus on access to the process, not election results.' ").

> numerous voting rights cases on the books dealing with the question of voter access. *It is a question involving the right to vote not the right of group representation.*

1982 Senate Report at 227 (emphasis added); *see also* 128 Cong. Rec. 14, 316 (1982) (Statement of Sen. Dole).

In construing the reach of amended Section 2, this Court has stressed that "the ultimate right [under] § 2 is equality of opportunity, not a guarantee of electoral success for minority-preferred candidates of whatever race." *DeGrandy*, 114 S. Ct. at 2658 n.11. Furthermore, in determining whether amended § 2 has been violated, this Court and lower federal courts have required stringent proof that minorities have been denied an "equal opportunity" to "participate in the political process and to elect representatives of their choice." The court must find that minority success "will be highly infrequent under the challenged plan before it may conclude, on this basis alone, that the plan operates to 'cancel out or minimize the voting strength of [the] racial grou[p].'" *Gingles*, 478 U.S. at 99-100 (O'Connor, J., concurring); *Id.* at 98.[49]

Moreover, plaintiffs cannot succeed on a Section 2 claim unless they show that minorities are denied an equal opportunity to participate in the political process *and* (2) to elect representatives of their choice. *Chisom v. Roemer*, 501 U.S. 380, 396-97 (1991). To satisfy the foregoing requirements, Section 2 plaintiffs essentially must show that minorities have been "shut out of the political process." *Davis v. Bandemer*, 478 U.S. at 158.[50]

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[49] *See also id.* at 98 (Section 2 violation depends on " 'strong indicia of lack of political power and the denial of fair representation' ") (O'Connor, J., concurring) (citation omitted); *Baird v. Consolidated City of Indianapolis*, 976 F.2d 357, 359 (7th Cir. 1992) (ruling that even if the three *Gingles* preconditions are present, Section 2 is not violated "if other considerations show that the minority [group] has an undiminished right to participate in the political process.").

[50] Other evidence of Congress's intent relating to the 1982 amendments to the Voting Rights Act confirms that a state's redistricting plan does not violate amended Section 2 unless minorities are effectively "shut out" of

(footnote continues)

In determining whether minority voters are being denied an "equal opportunity" to "participate in the political process and to elect representatives of their choice" under amended Section 2, Congress instructed the state and federal courts to apply the vote-dilution "factors" developed by this Court in *White v. Regester*, 93 S. Ct. 2332 (1973), and by the Fifth Circuit in *Zimmer v. McKeithen*, 485 F.2d 1297 (1973) ("*White-Zimmer* factors"). 1982 Senate Report at 28-29. Texas cannot establish the existence of these factors. As discussed above:

- In Texas today, minorities are not being denied the right to register, to vote, or otherwise to participate in the political process. *See LULAC*, 999 F.2d at 868 (concluding that minorities "have not established that the effects of past discrimination have hindered their ability to participate in the political process."); *see also* pp. 2-8, *supra* (discussing active minority participation in Texas politics).

- Voting in Texas elections is not racially polarized. *See* PL. Ex. 14K, J.A. 137; *see also Campos*, 1995 WL 478151, *4; pp. 4-5 *supra* (discussing lack of racial bloc voting in modern Texas).

- Texas does not have unusually large election districts, majority-vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against minorities, and Appellants presented no evidence that any such restrictive practices occur in Texas today. *See Minority Analysis* at 2-4 ("rejecting the discriminatory or restrictive practices of [Texas's] past."); *see also LULAC*, 999 F.2d at 853.

(footnote continued)

the political process. *See Voting Rights Act: Hearings on S.53, S.1761, S.1975, S.1992 and H.R. 3112 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary*, 97th Cong., 2d Sess. 819-20 (1982) ("Senate Hearings"). *See Also Id.*; at 223 (prepared statement of Sen. Kennedy) (amended § 2 seeks to guarantee that minorities are not "effectively shut out of a fair opportunity [to] participate in the election").

- Minorities are not hindered in their ability to participate effectively in the candidate-selection process. *See id.* at 880 (finding that there are no formal bars to the nominating or slating process); *see also* pp. 17-18 *supra* (minority officeholders played a key role in shaping Texas's redistricting process.).
- Political campaigns have not been characterized by overt or subtle racial appeals. *See LULAC*, 999 F.2d at 879 (finding that "alleged" racial appeals were merely "isolated incidents.").
- Members of minority groups have been elected to public office in the jurisdiction. *See* pp. 5-8 *supra* (summarizing recent minority electoral success).

1982 Senate Report at 28-29 (citations omitted).[51]

Certainly Texas cannot establish that the patently discriminatory practices that the 1982 Senate Report identified as potential violations of Section 2 occur in modern Texas. There is simply no evidence that election officials are making "absentee ballots available to white citizens without a corresponding opportunity being given to minority citizens," that Texas purged voters from its electoral rolls in a discriminatory manner, that "opportunities for re-registration were unduly limited," or that "the information provided [by Texas] to voters substantially misled them in a discriminatory way." 1982 Senate Report at 30 n.119 (citations omitted).[52]

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[51] In addition, as Texas proudly proclaims to the Justice Department, *Minority Analysis* at 1, *see* pp. 2-3 *supra*, there is no evidence of "a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group." 1982 Senate Report at 29. The statements from outreach hearings that Lawson/Reyes rely upon as support for their contention that Texas elected officials are insufficiently "responsive" are little more than the gripes that would be directed by any group of occasionally disgruntled voters at *any* representative.

[52] Of course, if a Section 2 plaintiff produces evidence that an electoral scheme was enacted with a racially discriminatory purpose, a Section 2

(footnote continues)

Finally, even without gerrymandering CD 29 as a majority-Hispanic district, Hispanics under HB 1 have more than a proportional number of Hispanic-majority congressional districts. Specifically, Hispanics are single-race majorities in CDs 15, 16, 20, 23, 27, and 28 (five out of 30 or 20%), while constituting only 18.4% of Texas's voting age citizen population.[53] Although proportionality is not "dispositive" in adjudicating vote-dilution claims under Section 2, it "is *always* relevant evidence." *DeGrandy*, 114 S. Ct. at 2664 (O'Connor, J., concurring). Because Hispanics are over-represented under HB 1 even without drawing CD 29 along racial lines, Section 2 in no way required Texas to create CD 29.

The active participation of minorities in all phases of Texas politics — as well as demonstrated minority electoral success — rebuts any contention that Section 2 could have mandated that Texas engage in race-based districting.

B. Interpreting Section 2 to Require "Affirmative Action Redistricting" Would Create Constitutional Concerns

Texas's claim that states may use race affirmatively to gerrymander single-race majority-minority congressional districts without any evidence that minorities are "essentially shut out of the political process" is unconstitutional under this Court's precedents. Although Texas claims to eschew such a goal, its interpretation of the Voting Rights Act — as requiring that

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(footnote continued)

violation can be made out without any need to show that minorities are shut out of the political process. *See* 1982 Senate Report at 67 (noting that plaintiffs will "continue to have the option of establishing a Section 2 violation by proving a discriminatory purpose behind the challenged practice or method"). Thus, if a state insidiously cracked a cohesive, compact minority group, a Section 2 claim could probably be made out even if the minority group were not thereby shut out of the political process. Needless to say, there is no evidence that Texas enacted HB 1 with a racially discriminatory purpose.

[53] *See Plan Analysis Reports System: Plan Citizenship Analysis, Congressional Districts* at 2 (1994).

racially safe districts be drawn wherever possible without a prior determination that minorities are being excluded from the political process — is tantamount to a proportional representation requirement, particularly in light of the non-retrogression requirement of Section 5.

This Court has made clear that if the Voting Rights Act were construed as requiring maximization or proportional representation, it is unconstitutional. As Justice Kennedy recently warned:

> [o]perating under the constraints of a statutory regime in which proportionality has some relevance, States might consider it lawful and proper to act with the explicit goal of creating a proportional number of majority-minority districts in an effort to avoid Section 2 litigation. Likewise, a court finding a Section 2 violation might believe that the only appropriate remedy is to order the offending State to engage in race-based districting and create a minimum number of districts in which minorities constitute a voting majority. The Department of Justice might require (in effect) the same as a condition of granting preclearance [under Section 5]. *Those governmental actions, in my view, tend to entrench the very practices and stereotypes the Equal Protection Clause is set against.*

DeGrandy, 114 S. Ct. at 2666 (Kennedy, J., concurring) (citation omitted) (emphasis added).[54] Because "the sorting of persons with an intent to divide by reason of race raises the most serious constitutional questions", *id.* race-based districting is only constitutionally permissible in strictly remedial settings. *See also Croson*, 488 U.S. at 493.

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[54] *See also Johnson v. Miller*, 864 F. Supp. at 1379 ("[t]o erect the goal of proportional representation is to erect an implicit quota for black [and other minority] voters. Far from a compelling state interest, such an effort is unconstitutional.") (citing *Bakke*, 438 U.S. at 307) (Powell, J.); *see also id.* at 1386.

By limiting race-based districting to such remedial circumstances, Section 2 will continue being used as a shield to ensure that minority voting rights are protected, rather than be used as a sword — without any proof that minorities are being excluded from the political process — to affirmatively maximize the number of single-race majority-minority voting districts. "It takes a shortsighted and unauthorized view of the Voting Rights Act to invoke that statute, which has played a decisive role in redressing some of our worst forms of discrimination, to demand the very racial stereotyping the Fourteenth Amendment forbids." *Miller*, 115 S. Ct. at 2494. Appellants' "affirmative action," non-remedial interpretation of Section 2 should therefore be rejected. *See Vera*, 861 F. Supp. at 1342 n.53.

C. Texas Has Not And Cannot Establish Any Other Compelling Governmental Interest To Engage In Race-Based Districting

This Court should reject Texas's argument that, separate and apart from complying with the Voting Rights Act, it had a compelling governmental interest to create Districts 18, 29, and 30 along racial lines because the districts were necessary to eradicate the effects of past racial discrimination. *See* Texas Brief at 24-25. A compelling state interest in remedying past discrimination does not exist independent of the Voting Rights Act. *See, e.g., Johnson v. Miller*, 864 F. Supp. at 1380.

This Court has only permitted the use of race to remedy demonstrably proven racial discrimination. *See Croson*, 488 U.S. at 500-01 504-06. If a State can demonstrate that its current voting practices are discriminatory — showing that the *Gingles* preconditions are satisfied and that minorities are shut out of the political process — the State has established a section 2 violation and may draw race-based districts to remedy the violation. If it cannot, there is no further room for the use of race. As this Court has often said, "[s]ocietal discrimination, without more, is too amorphous a basis for imposing a racially

classified remedy." *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 276 (1986).[55]

Appellants, particularly the Department of Justice, argue that Texas should be trusted to engage in race-based districting even where the Voting Rights Act does not require it to do so, because of Texas's history of racial discrimination and the fact that it has now reformed, and has only the best intentions. *See* DOJ Brief at 32-35. Such an argument turns logic on its head. Past bad actors should not be given special latitude; if anything, they should be more closely scrutinized when they undertake the same activity as before, but this time claiming to do so for a good reason.

In any event, even if eradicating the effects of past racial discrimination could be a compelling governmental interest apart from complying with the Voting Rights Act, the district court below properly found that "[n]o evidence was presented [by Texas] at trial to support this basis for minority districts"; therefore, the court "[did] not consider it further." *Vera*, 861 F. Supp. at 1343 n.53 (rejecting the United States' contention that Texas has a compelling interest to engage in "'affirmative action redistricting'" to eradicate past racial discrimination). The district court's findings of fact are not clearly erroneous. Accordingly, Texas cannot rely on this rationale to justify its race-based reapportionment plan.

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[55] Even if a state did have convincing evidence that remedial action were necessary to remedy specific victims of racial discrimination in voting, the Fourteenth Amendment probably bars states from doing more than what the Voting Rights Act requires in remedying prior discriminatory voting practices. *See Shaw v. Reno*, 113 S. Ct. at 2832 (noting that, in *UJO v. Carey*, "only three justices were prepared to say that States have a significant interest in minimizing the consequences of racial bloc voting apart from the requirements of the Voting Rights Act.") (quoting *UJO*, 430 U.S. at 167-68). *See also Johnson v. Miller*, 864 F. Supp. 1354; *Shaw v. Hunt*, 861 F. Supp 408, 476-495 (1994) (Voorhees, J., concurring in part and dissenting in part) (same).

IV. TEXAS FAILED TO EMPLOY NARROWLY TAILORED MEANS IN CREATING CDS 18, 29, AND 30

Once strict scrutiny applies, it is not sufficient for Texas to prove that its race-based classifications serve a compelling governmental interest. In addition, Texas must prove that its racial classifications are narrowly tailored. "[T]o pass constitutional muster, [state racial classifications] must be 'necessary . . . to the accomplishment' of their legitimate purpose." *Palmore v. Sidoti*, 466 U.S. 429, 432 (quoting *McLaughlin v. Florida*, 379 U.S. 184, 196 (1964)). This Court has long "recognize[d] the need for careful judicial evaluation to assure that any . . . program that employs racial or ethnic criteria to accomplish the objective of remedying the present effects of past discrimination is narrowly tailored to the achievement of that goal." *Fullilove v. Klutznick*, 448 U.S. 448, 480 (1980). "The State has the burden of producing evidence of narrow[] tailoring to achieve its [purported] compelling state interest." *Vera*, 861 F. Supp. at 1342. Narrow tailoring analysis consists of two independent inquiries. First, courts must consider "whether lawful alternative[s] and less restrictive means could have been used." *Wygant*, 476 U.S. 267 at 280 n.6. Second, to be sufficiently narrowly tailored, "the classification at issue must 'fit' with greater precision than any alternative means." *Id.* (citation omitted). *See also United States v. Paradise*, 480 U.S. 149, 199 (O'Connor, J., dissenting) (the states's race-based policy "must fit with greater precision than any alternative remedy"). A precise fit is necessary because "racial classifications are simply too pernicious to permit any but the most exact connection between justification and classification." *Wygant*, 476 U.S. at 280 (quoting *Fullilove v. Klutznick*, 448 U.S. 448, 537 (1980)).

Because Texas failed to determine which discriminatory districts—if any—its customary congressional reapportionment process would have produced, there is no practical way for

Texas to show that its race-based districting was narrowly tailored to overcoming discriminatory districting.[56] Thus, Texas has not and cannot show that Districts 18, 29, and 30 are narrowly tailored because: (1) Texas created these districts in utter disregard of traditional districting principles, including compactness, contiguousness, and respect for established communities of interest; (2) the districts as drawn do not substantially include the particular minority voters whose constitutional and statutory rights they purportedly protect; and (3) Texas rejected more compact, alternative majority-minority districts. Therefore, CDs 18, 29, and 30 are unconstitutional.[57]

A. Districts 18, 29, And 30 Violate Traditional Districting Principles And Therefore Are Not Narrowly Tailored

Even if a state has a compelling governmental interest to engage in race-based districting, such districting is narrowly tailored only if the state "employ[s] sound districting principles [including] compactness[,]" and if the affected racial group's "residential patterns afford the opportunity of creating districts in which they will be in the majority." *United Jewish Organizations of Williamsburgh ("UJO") v. Carey*, 430 U.S. 144, 167-68 (1977). Here, not only did Texas utterly disregard its own traditional districting principles, but it has sought to create safe, single-race majority districts even though the "residential patterns" do not afford an opportunity to do so in a reasonably compact manner.

By its own admission, Texas departed dramatically from traditional districting principles in constructing CDs 18, 29, and 30.[58]

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[56] *See Croson*, 488 U.S. at 506 (noting that it is "impossible" to assess whether race-based state action is narrowly tailored if it is "not linked to [previously] identified discrimination").

[57] In addition, all of the districts "went beyond what was reasonably necessary to [comply with the Voting Rights Act,]" *Shaw v. Reno*, 113 S. Ct. at 2831.

[58] *See* Texas Jurisdictional Statement at 11 & 6 (Districts 18 and 29); DOJ Brief at 7 ("The Legislature knew it was possible to create a reasonably compact black opportunity district in Dallas County. At least two such plans

(footnote continues)

Moreover, the maps, documentary evidence, and testimony at trial confirm that CDs 18, 29, and 30 are extraordinarily non-compact and non-contiguous, splinter existing political subdivisions, and destroy communities of interest. *See* pp. 13-17, *supra*.

At trial, Texas contended that it "does not have and never has used traditional districting principles such as natural geographic boundaries, contiguity, compactness, and conformity to political subdivisions." *Vera*, 861 F. Supp. at 1333. The district court found that Texas's contention was simply untrue. It found that, in the past, "Texas has not intentionally disregarded traditional districting criteria. A glance at the maps showing the organization of Texas's Congressional districts in 1980 refutes the State's argument that it recognizes no state interest in traditional districting principles." *Vera*, 861 F. Supp. at 1334 (citing Map of Texas Congressional Districts for the 99th-102nd U.S. Congress, PL. Ex. 28A, J.A. 138). The district court's finding that Texas in the past has followed traditional districting principles in congressional reapportionment is not clearly erroneous. Thus, Texas's disregard for such factors establishes as a matter of law that HB 1 is not narrowly tailored.[59]

The requirement that a State take traditional districting principles into account when it draws district lines based on race does not require it to draw one platonically perfect, compact district in order to comply with the narrow tailoring requirement. When the State determines that districts drawn in traditional ways will

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(footnote continued)

were presented to it) (citing the Johnson and Owens-Pate plans); *Vera*, 861 F. Supp. at 1338 (reviewing PL. Ex. 29).

[59] Texas's contention that despite the fact that HB 1 splinters municipalities and precincts, the congressional districts in HB 1 were created consistent with its traditional districting principles directly contradicts representations Texas made in defending its 1971 congressional reapportionment plan in *White v. Weiser*, 412 U.S. 783, 789 (1973). There, Texas contended that the population variations stemmed from Texas's strong state policy of avoiding fragmenting county, municipal, and other political subdivisions. *Id.* at 791. *See also* Texas *Weiser* Brief on the Merits at 75-81. Texas "traditions" seem to change fast.

infringe the rights of individuals who have suffered discrimination in voting, it may have some remedial latitude. *See* Section IV. B., *infra*. A State may not, however, materially abandon traditional districting constraints, and claim that its interest in "fixing" elections gives it *carte blanche* to use race for any purpose that it wishes. Such an argument is inconsistent with the Equal Protection Clause and must be rejected. *See Shaw v. Reno*, 113 S. Ct. at 2831 (Voting Rights Act does not give states "*carte blanche* to engage in racial gerrymandering").

Requiring States to respect traditional districting criteria such as compactness and political subdivisions also helps make the narrow tailoring inquiry judicially manageable. As noted above, federal courts have been evaluating district compactness for years in ruling on Section 2 claims, with reasonably predictable and consistent results. Were States prohibited from taking such criteria into account at all, then there might well be only one ideal district that satisfies narrow tailoring requirements. Such a rule would ill serve the need to afford states some latitude in crafting a remedy. It could also involve courts in unduly academic arguments about which district is "ideal." Conversely, however, requiring some fidelity to traditional districting principles narrows the State's discretion, and ensures that remedial districts do not differ dramatically from other districts in the State.

Finally, Appellants inappropriately raise the Equal Protection Clause in objecting to a requirement that States draw regularly-shaped districts when creating remedial majority-minority districts, but not when drawing non-remedial, Anglo-majority districts. *See* DOJ Brief at 56-58 (contending that the ruling below "requires the State to discriminate against minority incumbents and would-be incumbents"). This contention lacks foundation. First, as demonstrated above, Texas gerrymandered CDs 18, 29, and 30 along precise racial lines; by contrast, the majority-Anglo districts were not constructed along strict racial lines. "[R]acial and ethnic distinctions of any sort are inherently suspect and [call] for the most exacting judicial examination." *Bakke*, 438 U.S. 265, 271 (Powell, J.). Accordingly, not only is it appropriate to insist that

race-based congressional districts are narrowly tailored, it is constitutionally required. Second, permitting states to redistrict without regard for criteria such as compactness and political subdivisions would lead to the result here — the creation of allegedly "remedial" districts that do not address the harm done to individuals who have supposedly been denied the right to vote with their local communities on account of their race. *See* Section IV. B., *infra*.

Because Texas entirely ignored traditional districting criteria in creating CDs 18, 29, and 30, HB 1 is not narrowly tailored.

B. There Is An Insufficient Nexus Between The Voters Included In CDs 18, 29, and 30, And The Particular Minority Voters Whose Constitutional and Statutory Rights The Districts Purport to Protect

State race-based districting — like all other state race-based decision-making — is narrowly tailored only if "[w]hatever 'remedy' the State imposes . . . [is] adequately tailored to the 'wrong' to which it is addressed." *Shaw v. Hunt*, 861 F. Supp. at 485 (Voorhees, J., dissenting).[60] For these race-based districts to be narrowly tailored, the districts as created must substantially include the particular minority voters whose constitutional and statutory rights they are designed to protect. Racially constructed legislative districts are narrowly tailored only if they " 'restore the [specific] victims of discriminatory conduct to the position they would have occupied in the absence of such conduct.' " *Missouri v. Jenkins*, 115 S. Ct. 2038, 2054 (1995) (citation and internal quotation omitted).

Here, even if Texas had a compelling governmental interest to create race-based districts in order to comply with the Voting Rights Act, Districts 18, 29, and 30 as drawn do not substantially

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[60] *See Milliken v. Bradley*, 418 U.S. 717, 744 (1974) ("*Milliken I*") ("the scope of the remedy is determined by the nature and extent of the constitutional violation") (citation omitted). *See also Milliken v. Bradley*, 433 U.S. 267, 280 (1977) ("*Milliken II*") ("[t]he remedy must . . . be related to 'the *condition* alleged to offend the Constitution . . . ' ") (citation omitted) (emphasis in original).

include the particular minority voters whose voting rights the districts purport to protect. Texas argues that CD 30 as drawn is narrowly tailored to preserving the voting rights of the compact African-American community in Dallas County. *See* Texas Brief at 38-39. Yet, District 30 as drawn does not substantially relate to the large African-American community in Dallas County. That community is located south and southeast of downtown Dallas.[61] District 30 as drawn excludes a significant percentage of the core Dallas County Black community, which was placed in CDs 5 and 24, respectively.[62] In addition, CD 30 as drawn includes thousands of scattered Blacks in the northern and northwestern portions of Dallas County, as well as Blacks living in Collin and Tarrant Counties.[63]

Due to then-Senator Johnson's preference for "performing" African-American voters, *see* Johnson Testimony, 12/12/91 Tr. at 234-35 & 248-49, J.A. 429-31 & 435-36, thousands of Blacks from the core Dallas County Black community were excluded from CD 30. *See* State Ex. 33, Map of Core and Segmented Portions of CD 30, J.A. 335, (demonstrating that 30% of the Blacks in CD 30 live outside the core African-American community in south Dallas). Thus, as the Lawson/Reyes Intervenors concede, the Blacks outside of the core Dallas County Black community were not included in CD 30 to remedy past voting rights violations they may have suffered. *See* Lawson/Reyes Brief at 14. Not only does CD 30 fail to substantially include the particular African-American voters whose voting rights the district purports to protect, the district was not even designed to include such voters. Similarly, Districts 18 and 29 do not substantially include the particular African-American and Hispanic voters in Harris County that they were designed to protect. *See*

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[61] *See* Map of Dallas County Black Population Distribution by VTD, Plan C657, PL. Ex. 34H2, J.A. 150.

[62] *See* Map of Texas Districts of the 103rd U.S. Congress Plan C657, Dallas County, PL. Ex. 34(B)(3), J.A. 146.

[63] *See* PL. Ex. 34H2, J.A. 150, and Map of Collin County Black and Hispanic Population Distribution by VTD, PL. Ex. 34H17, Plan C657, J.A. 153.

State Ex. 61A, map of Core and Segmented Portions of CD 18, J.A. 341; State Ex. 61B, map of Core and Segmented Portions of CD 29, J.A. 342. Thus, CDs 18, 29, and 30 are not narrowly tailored.

Under the Department of Justice's test for satisfying narrow tailoring, so long as the State does not draw more compact minority "opportunity" districts than necessary, it may essentially draw them wherever it wishes. Under this logic, if a compact African-American district could be drawn in South Dallas, but the State draws an African-American district in North Dallas or in Collin or Tarrant Counties instead in order to serve the interests of incumbents, the plan is narrowly tailored. The Department of Justice's approach rests on the "suspect" premise that "the rights of some minority voters under Section 2 may be traded off against the rights of other members of the same minority class." *DeGrandy*, 114 S. Ct. at 2661. This approach must be rejected.

The only circumstance under which a State is permitted to take race into account is to remedy the harms flowing from past racial discrimination. *Croson*, 488 U.S. at 493. These harms relate to particular individuals. The right not to be discriminated against in voting is a right that belongs to individuals, not racial groups. The harm done to an individual in South Dallas is not addressed by enhancing the voting strength of someone in North Dallas or in Collin or Tarrant Counties who happens to be the same color as the person aggrieved. Such a remedy is not narrowly tailored to the harm, and is based on a principle that this Court has plainly rejected. *See Shaw v. Reno*, 113 S. Ct. at 2827; *Miller*, 115 S. Ct. at 2486.

C. By Rejecting More Compact, Alternative Majority-Minority Districts, Texas Failed To Employ Narrowly Tailored Means In Drawing CDs 18, 29, And 30 Along Racial Lines.

There is overwhelming evidence that Texas could have drawn the same number of majority-minority and "opportunity" minority districts as it did in HB 1, with highly compact and

contiguous districts that respected existing political subdivisions and preserved cohesive neighborhood interests. The district court noted that faced with this evidence, Texas did not "seriously argue" at trial that "Districts 18, 29 and 30 are 'narrowly tailored' to fulfill the State's obligations under the Voting Rights Act and would thus withstand the strict scrutiny test. *Based on the evidence, this would have been nigh impossible.*" *Vera*, 861 F. Supp. at 1342 (emphasis added).

The court further noted that "[a]t least two proposed redistricting plans for Dallas — Senator Johnson's Plan C500 and Owens-Pate Plan 606 — and two for Houston — Owens-Pate Plan 606 and Dr. Weber's Plan 676 — included far more compact, contiguous majority-minority districts." *Vera*, 861 F. Supp. at 1342. In addition, "[m]any" state witnesses "acknowledged that majority-minority districts could have been created in Harris and Dallas counties with more respect for compactness, contiguity, geography, and neighborhood preservation." *Id.* (citing Johnson Deposition at 130-32, 142; Johnson Testimony, 6/28/94 Tr. at 128-29).[64]

Yet, the districts as drawn fail any measure of compactness, causing great harm to the electoral process. "[A] district is sufficiently geographically compact if it allows for effective representation . . . [A] district would not be sufficiently compact if . . . it was so convoluted that there was no sense of community, that is, if its members and its representative could not easily tell who actually lived in the district." *Dillard v. Baldwin*

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[64] The Lawson/Reyes Intervenors erroneously contend that "this Court has held that different minority voters should not be combined to assess Voting Rights Act compliance unless political cohesion between the two groups is proved. Lawson/Reyes Brief on the Merits at 55 n.80 (citing *Growe*, 113 S.Ct. 1075 (1993)). This contention, however, is plainly incorrect. *See also LULAC*, 999 F.2d at 894 n.2 (Jones, J., concurring). This Court has never held that states are vulnerable under § 2 if they combine minority groups to form majority-minority districts. As is discussed above, rather than creating balkanized, single-race majority districts, Texas could have easily combined Blacks and Hispanics into two compact districts in Houston in which together they would have been overwhelming majorities. *See* pp. 13-14, *supra*.

County, 686 F. Supp. 1459, 1466 (M.D. Ala. 1988). These bizarre districts destroy any "sense of community."

In light of the foregoing, the district court correctly concluded that Texas "ha[d] not carried its burden of production on the issue of narrow tailoring." *Vera*, 861 F. Supp. at 1342. Texas's refusal to implement these alternative districting plans is sufficient, *in and of itself*, to show that Texas failed to use narrowly tailored means in creating districts 18, 29, and 30. Given that the districts as drawn also make a mockery of traditional districting principles, Texas cannot show that it employed narrowly tailored means in drawing CDs 18, 29, and 30 along racial lines. *See Vera*, 861 F. Supp. at 1344 ("Where obvious alternatives to a racially offensive districting scheme exist, the bizarre districts are not narrowly tailored.").

CONCLUSION

For the reasons set forth above, Appellees urge the Court to affirm the judgment below.

Respectfully submitted,

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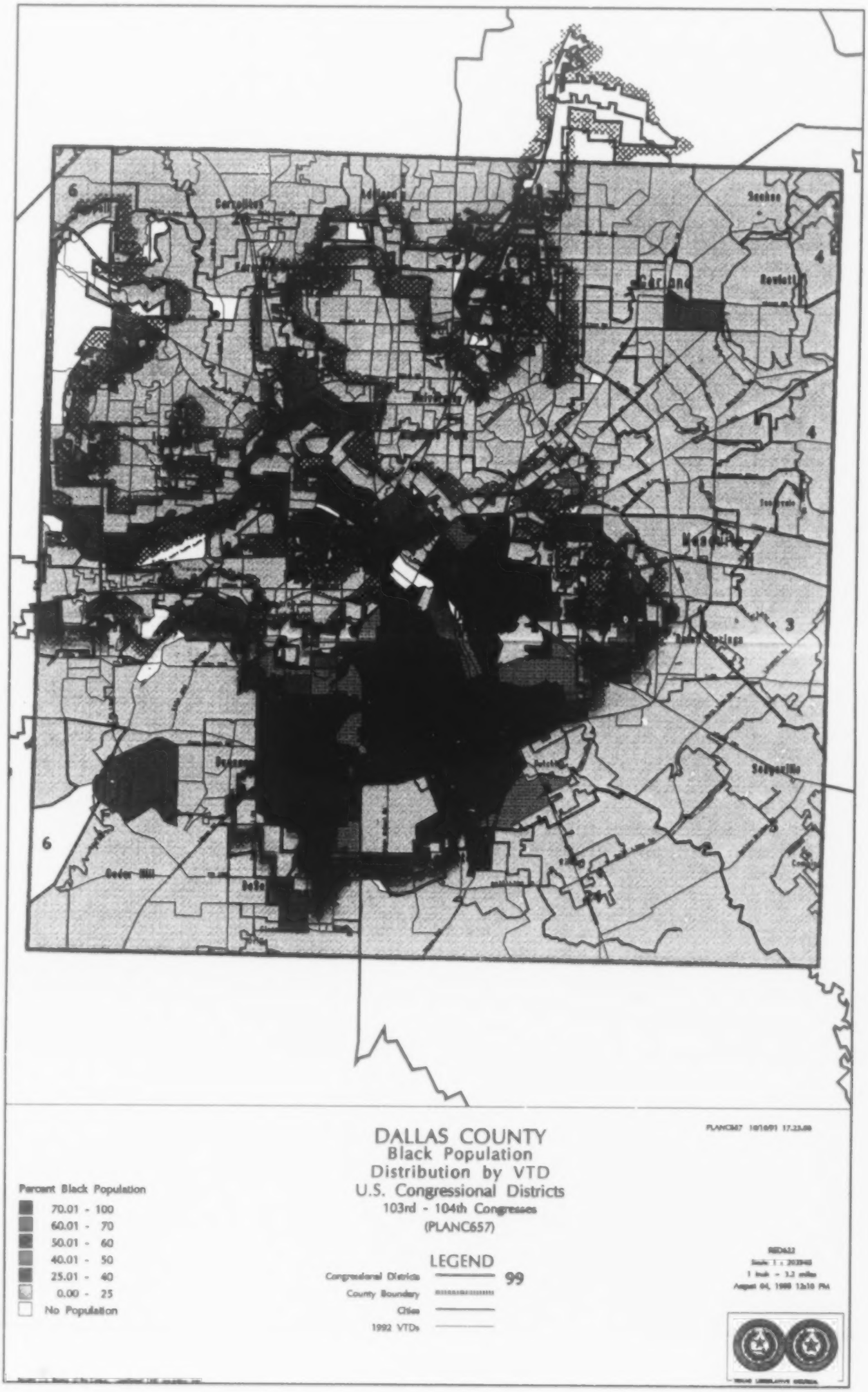
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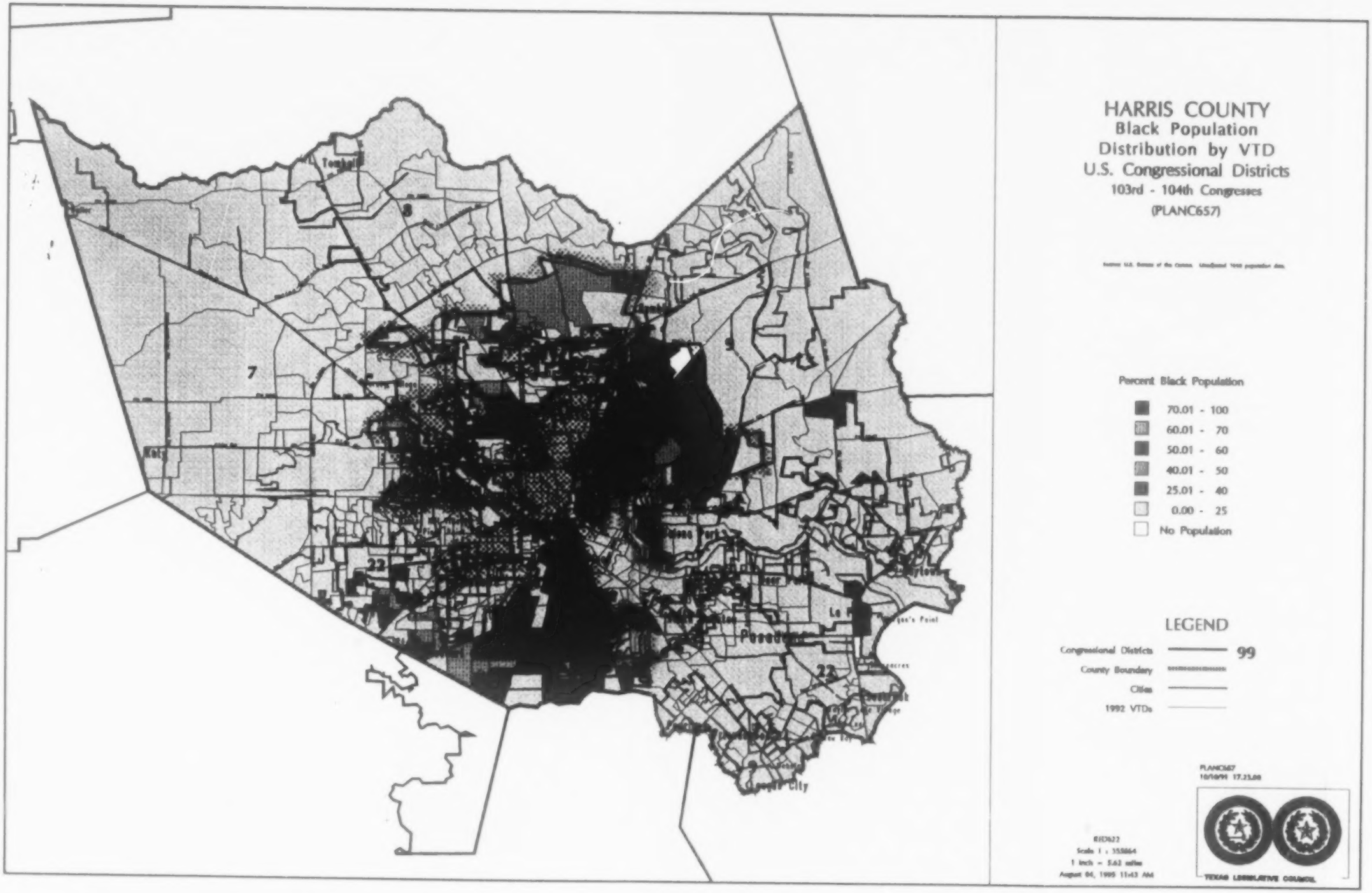
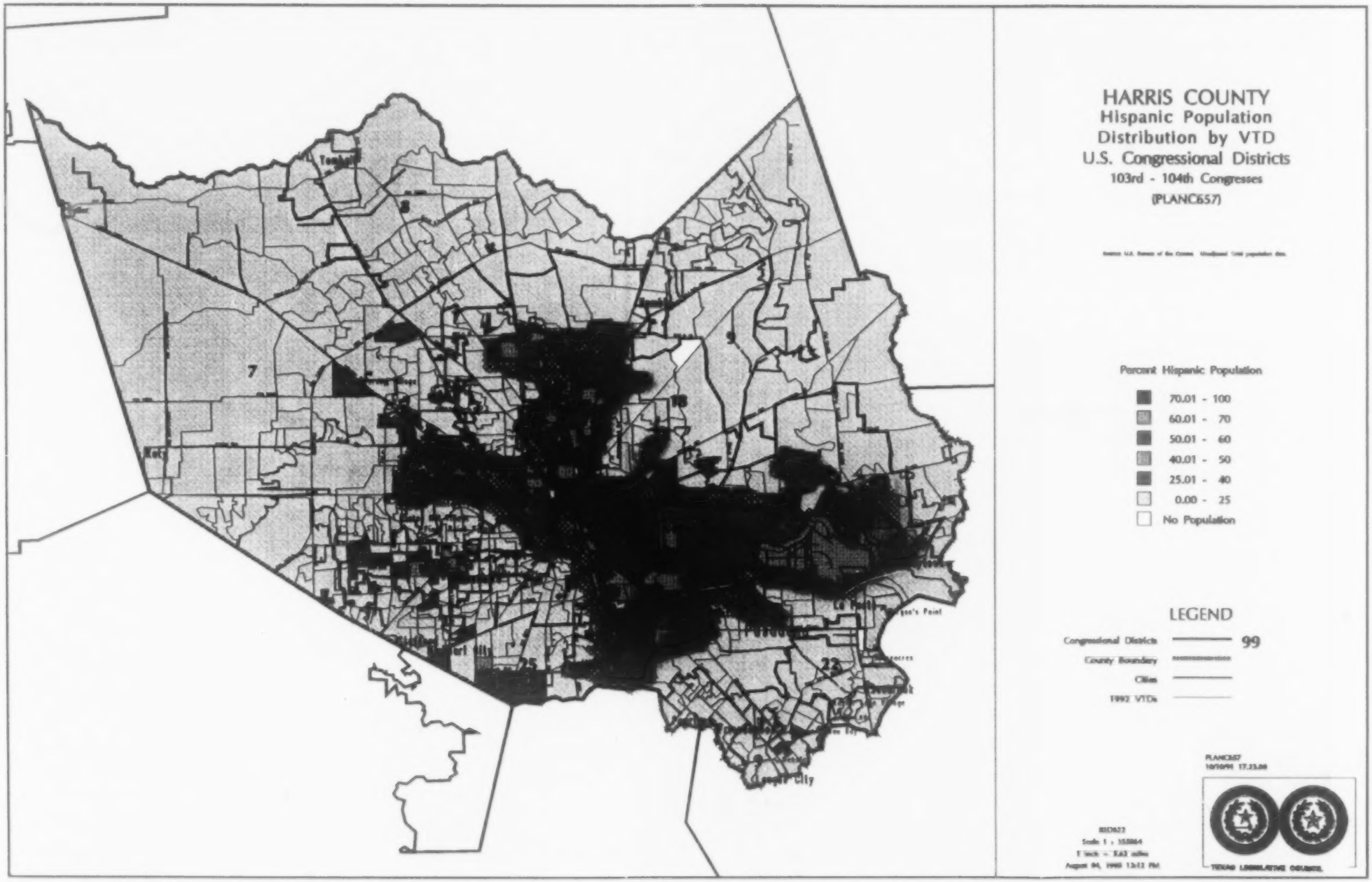
Terrell
Crandall
Kemp
Kaufman
Cedar Creek Lake
Trinidad
Malakoff
Athens
Corsicana
Navarro
Ellis
Rockwall
Hunt
Collin
Denton
Tarrant
Johnson
Henderson
Van Zandt
Kaufman
Dallas
DALLAS COUNTY
Black Population
Distribution by VTD
U.S. Congressional Districts
103rd - 104th Congresses
(PLANC657)
PLANC657 10/10/01 17:23:08
Percent Black Population
70.01 - 100
60.01 - 70
50.01 - 60
40.01 - 50
25.01 - 40
0.00 - 25
No Population
LEGEND
Congressional Districts
99
County Boundary
Cities
1992 VTDs
REDA32
Scale: 1 : 203940
1 inch = 3.2 miles
August 04, 1998 12:10 PM
TEXAS LEGISLATIVE COUNCIL

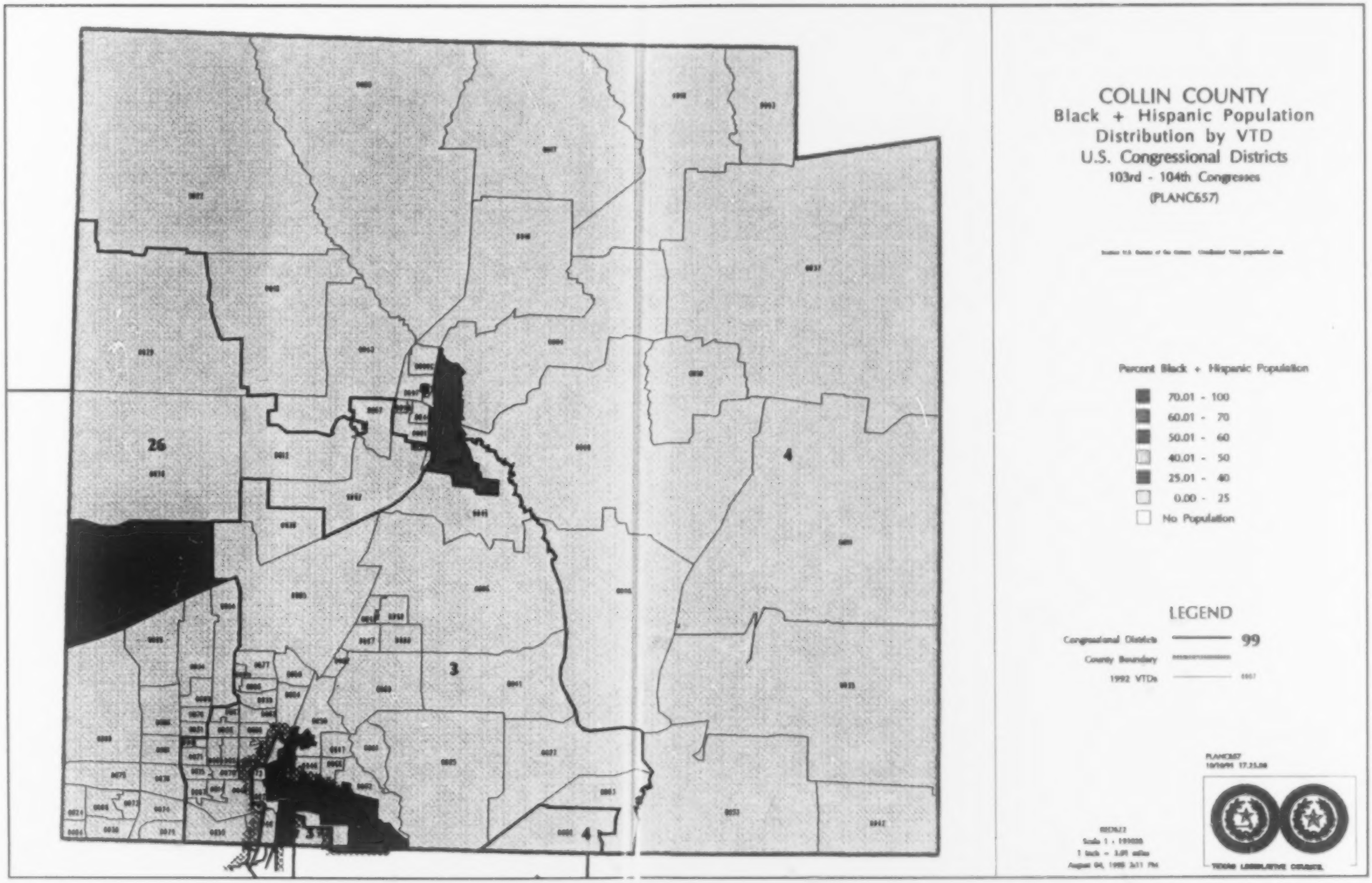
Plaintiffs's Exhibit 34H8



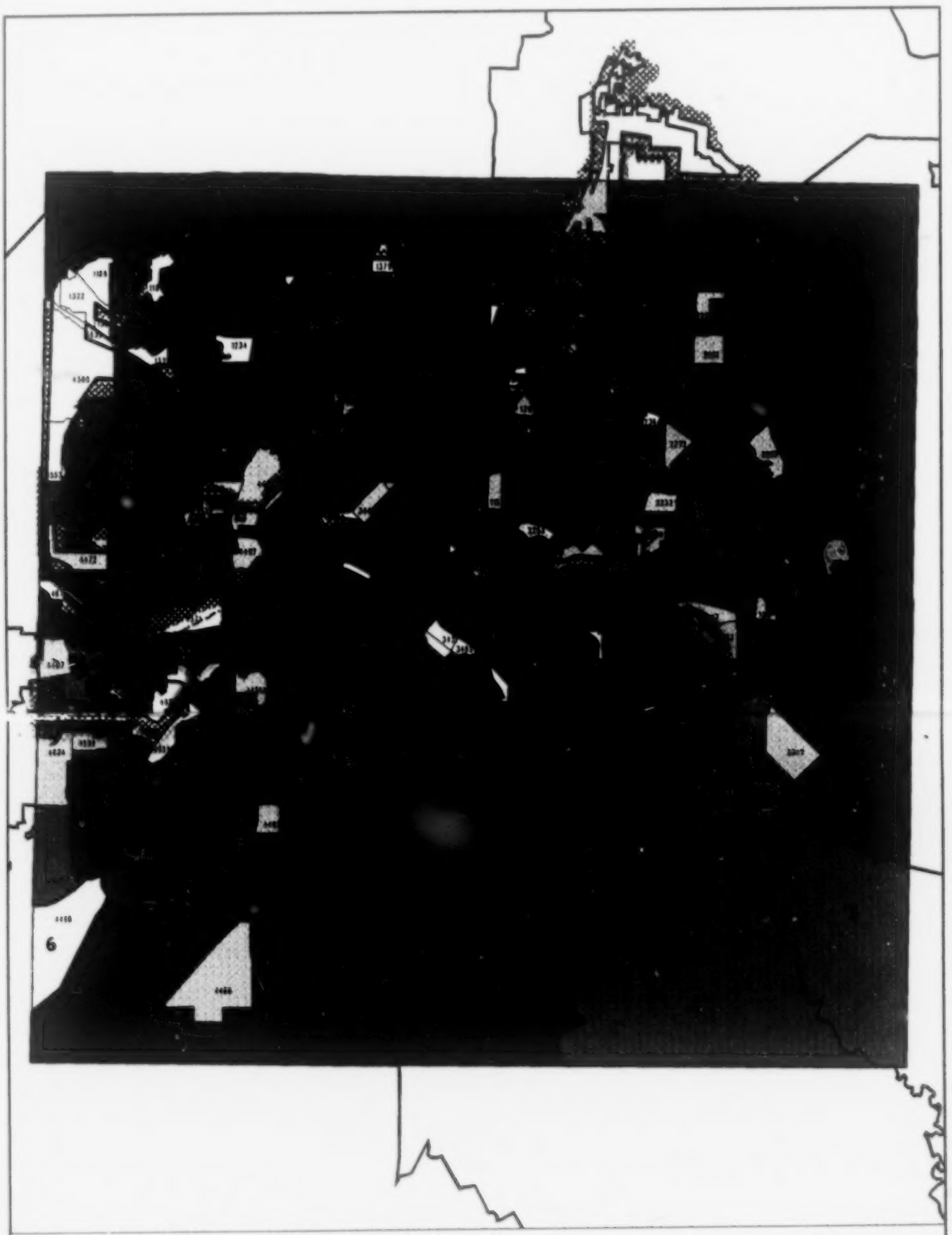
Plaintiffs' Exhibit 34H9



Plaintiffs' Exhibit 34H17

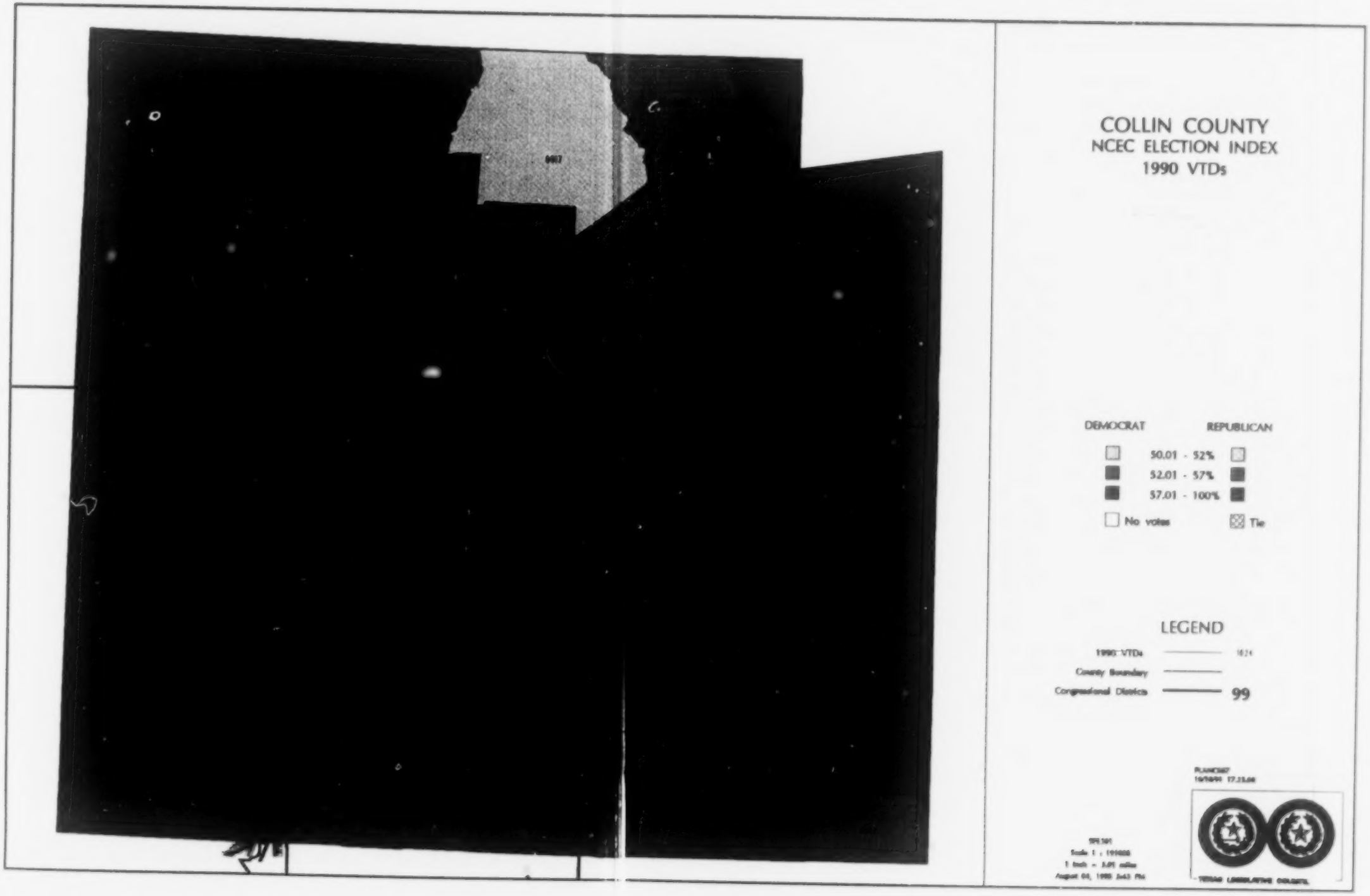


State's Exhibit 9A(1)



State's Exhibit 9A(2)

State's Exhibit 9B



(13) (13) (10)

Supreme Court, U.S.
FILED
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Nos. 94-805, 94-806, and 94-988

In the Supreme Court of the United States

OCTOBER TERM, 1995

GEORGE W. BUSH, GOVERNOR OF TEXAS, ET AL.,
APPELLANTS

v.

AL VERA, ET AL.

REV. WILLIAM LAWSON, ET AL., APPELLANTS

v.

AL VERA, ET AL.

UNITED STATES OF AMERICA, APPELLANT

v.

AL VERA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

REPLY BRIEF FOR THE UNITED STATES

DREW S. DAYS, III
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Department of Justice
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In the Supreme Court of the United States

OCTOBER TERM, 1995

No. 94-805

GEORGE W. BUSH, GOVERNOR OF TEXAS, ET AL., APPELLANTS

v.

AL VERA, ET AL.

No. 94-806

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v.

AL VERA, ET AL.

No. 94-988

UNITED STATES OF AMERICA, APPELLANT

v.

AL VERA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

REPLY BRIEF FOR THE UNITED STATES

We argue in our opening brief (Br. 26-32) that Texas had a compelling interest in drawing one black opportunity district in Dallas County and one black and one Hispanic opportunity district in Harris County, because it had a strong basis in evidence for concluding that such districts were required by

Section 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973. We also argue (Br. 35-45) that the districts drawn by the State satisfy the narrow tailoring requirement of strict scrutiny. While the districts are irregular in shape, that approach was necessary in order for the State to comply with Section 2 while simultaneously protecting its incumbents. Finally, we argue (Br. 32-35) that the districts constitutionally serve the State's compelling interest in eliminating the effects of racially polarized voting. Nothing in appellees' response undermines the force of those arguments.

1. Appellees argue (Br. 46-47) that, before using race to draw district lines in order to comply with Section 2, a State must first create districts by following its customary districting practices. Only if that process results in a plan that violates Section 2, appellees contend, may the State use race in drawing district lines. This Court has consistently held, however, that a government can demonstrate a compelling interest in race-conscious action by showing "a strong basis in evidence of the harm being remedied." *Miller* v. *Johnson*, 115 S. Ct. 2475, 2491 (1995); *Shaw* v. *Reno*, 113 S. Ct. 2816, 2832 (1993); *City of Richmond* v. *J.A. Croson Co.*, 488 U.S. 469, 500 (1989). Accordingly, if a State has a strong basis in evidence for concluding that it must create minority opportunity districts in order to comply with Section 2, it may include such districts in its redistricting plan from the outset. There is no requirement that a State go through the redistricting process twice before it may create minority opportunity districts in order to comply with Section 2.

2. Appellees argue (Br. 45-56) that the predicates for a Section 2 violation were not established in this

case, and that the State therefore could not invoke its compelling interest in complying with Section 2. As we explain in our opening brief (Br. 26-30), however, each of the three preconditions for a Section 2 violation was established (see *Thornburg* v. *Gingles*, 478 U.S. 30, 50-51 (1986)), and the failure to draw one black opportunity district in Dallas County and one black and one Hispanic opportunity district in Harris County would have left minority voters in those areas substantially underrepresented when compared to their percentage of the population. The State therefore had a strong basis in evidence for concluding that three minority opportunity districts were required by Section 2.

a. Appellees contend (Br. 48-50) that the *Gingles* compactness requirement was not satisfied because the districts actually drawn by Texas are not compact. As this Court explained in *Gingles*, however, the sole purpose of the compactness requirement is to determine whether minority voters "possess the *potential* to elect representatives in the absence of the challenged structure or practice" and therefore "have been injured by that standard or practice." 478 U.S. at 50 n.17. For that reason, the relevant inquiry under *Gingles* is not whether a particular district actually drawn in order to comply with Section 2 is compact, but whether a reasonably compact district could have been drawn. *Id.* at 38. As this Court has stated, the compactness and numerosity precondition addresses "the *possibility* of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice." *Johnson* v. *DeGrandy*, 114 S. Ct. 2647, 2655 (1994) (emphasis added).

In this case, the evidence shows that it was possible to draw one reasonably compact district in Dallas County that would have afforded black voters the potential to elect. U.S. Br. 26. The evidence also shows that, in Harris County, it was possible to draw either one reasonably compact district in which black voters would have had the potential to elect, or one reasonably compact district in which Hispanics would have had the potential to elect. *Id.* at 28-29. Appellees concede (Br. 66-67) that it was possible to draw such districts. The *Gingles* compactness requirement was therefore satisfied. See U.S. Br. 26-29.[1]

While framed in terms of the *Gingles* compactness requirement, appellees' real argument is that a State seeking to comply with Section 2 must include in its redistricting plan the geographically compact dis-

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[1] Appellees "doubt" that it was possible to draw a compact district in Harris County in which Hispanics would have constituted a majority of the citizen voting age population (CVAP). Br. 49 n.44. They also assert that there is no evidence that a compact majority black district could have been drawn in Dallas County. Br. 50 n.45. As we explain in our opening brief (Br. 24-25), this Court has reserved the question whether minority group members must constitute a CVAP majority in order to satisfy the first *Gingles* precondition, as well as the related question whether the first precondition would be satisfied by proof that the relevant minority group could constitute a sizable minority in a district and could elect candidates of their choice by attracting some cross-over votes. *DeGrandy*, 114 S. Ct. at 2655-2656. Because the "strong basis in evidence" standard permits a State to resolve uncertain Section 2 questions in favor of the reading that is more protective of minority voting rights, the State in this case was entitled to proceed on the assumption that the first *Gingles* precondition would be satisfied by a showing that it was possible to draw a district in which the relevant minority group would have had the potential to elect. *Gingles*, 478 U.S. at 50 n.17.

tricts that led it to conclude that Section 2 required it to create minority opportunity districts. As we discuss in our opening brief (Br. 30-32), however, so long as a State's plan affords minority voters an equal opportunity to participate in the political process and to elect representatives of their choice, Section 2 is satisfied; federal law does not require a State to meet its Section 2 obligations by drawing compact districts.

b. Appellees next assert (Br. 50-51) that voting in Dallas and Harris Counties is not racially polarized. One year before the legislature adopted the redistricting plan at issue here, however, a federal district court issued detailed findings concerning bloc voting in Dallas County. *Williams* v. *City of Dallas*, 734 F. Supp. 1317, 1387-1394 (N.D. Tex. 1990). That court specifically found that, "in a large number of both at-large and single-member district elections since 1977, the African-American vote was substantially polarized." *Id.* at 1389-1391. The court also found that "analysis of at-large elections since 1975 involving a serious African-American candidate shows that the choice of the African-American community has always been defeated by substantial white polarized bloc voting." *Id.* at 1394. Those findings justified the legislature's conclusion that racial bloc voting existed in Dallas County.[2]

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[2] Appellees contend (Br. 50 n.47) that the State was not entitled to rely on *Williams* because the court adopted an "extreme" interpretation of the Voting Rights Act. In support of that contention, appellees point to that court's failure to accord significance to the election of Hispanic City Council candidate, Al Gonzalez. The *Williams* court found, however, that Gonzalez was elected with substantial white backing in an attempt to head off a Section 2 challenge by Hispanic voters

There was also overwhelming evidence of racial bloc voting in Harris County. Expert testimony presented at trial established that, in state legislative and congressional elections in the area now covered by District 29, Hispanic candidates, on average, received 95% of the Hispanic vote, but only 2% of the white vote. J.A. 226. The 1992 Democratic primary in District 29 in which Gene Green, who is white, defeated Ben Reyes, who is Hispanic, illustrates the extent of polarized voting in that area. In that election, 99% of the Hispanic voters cast ballots for Reyes, while 91% of white voters cast ballots for Green. St. Exh. 14, App. 2, Table 8. Expert testimony also showed that the area now covered by District 18 also exhibited a high degree of polarization. 4 Tr. 187; J.A. 227. The legislature therefore reasonably concluded that voting in Harris County was racially polarized.

Appellees contend (Br. 50) that the Fifth Circuit's decision in *League of United Latin American Citizens* v. *Clements*, 999 F.2d 831 (1993) (en banc), cert. denied, 114 S. Ct. 878 (1994), held that there is no racial bloc voting in Dallas or Harris Counties. That case, however, involved judicial elections, and the court of appeals' conclusion that party affiliation rather than race determined election outcomes was limited to that specific context. The court reasoned that "judicial elections are low-profile elections in which the voters know little more about the

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and that those "very atypical circumstances * * * will not reoccur." 734 F. Supp. at 1324-1325, 1327. The court therefore correctly concluded that voting in Dallas County is racially polarized and that the election of Gonzalez did not suggest otherwise. See *Gingles*, 478 U.S. at 75-76.

candidates than what they read on the ballot. The voters, therefore, will make their choice based upon the information that the ballot contains—party affiliation." 999 F.2d at 878-879. That analysis has no application to primary elections or high profile congressional elections.

Appellees' reliance (Br. 50) on *Morris* v. *City of Houston*, 894 F. Supp. 1062 (S.D. Tex. 1995), is similarly misplaced. In that case, the court examined four nonpartisan local elections in Houston and concluded that white voters supported Hispanic candidates in two of them. *Id.* at 1066. That small sample of nonpartisan elections for local office does not detract from the State's strong basis for believing that racially polarized voting exists in congressional elections in Harris County.

Appellees also attribute significance to the success of some minority candidates. Br. 55. Their discussion of those successes, however, is misleading. Appellees point to five minority candidates who have been nominated or elected to statewide office (Br. 3-4), but they fail to discuss whether voting in the elections for those candidates was racially polarized in Dallas and Harris Counties. For example, appellees cite the statewide success of Attorney General Morales. What appellees fail to mention is that, in the 1990 Democratic primary, Morales received 84% of the Hispanic vote, but only 14% of the white vote, in the area covered by District 29. St. Exh 14, App. 2, Table 8. Similarly, appellees note (Br. 4-5) that there are a significant number of blacks and Hispanics in the State's congressional and legislative delegations. Appellees fail to include any information, however, on the racial composition of the districts from which those legislators were elected. In fact, at

the time of redistricting, no black candidate had ever been elected to Congress or the state senate from a majority-white district in Texas, and only two black candidates had ever been elected to the state house from majority-white districts. St. Exh. 17, at 51-55. Similar data exist concerning the failure of Hispanic candidates to win elections in majority-white districts. J.A. 252; U.S. Exh. 1095 (letter dated Nov. 12, 1995, at 2). Appellees cite (Br. 4, 50) a table purporting to show that black candidates have been successful most of the time in districts in which blacks comprise between 40% and 50% of the population. Except in the two cases in which blacks prevailed in majority-white districts, however, there is no evidence that black success in those districts is attributable to white cross-over voting, rather than coalitions with Hispanic voters. And as we note in our opening brief (Br. 29-30), the black/Hispanic coalition had begun to break down at the time of the 1991 redistricting.

The evidence before the district court therefore supported the State's conclusion that voting in Dallas and Harris Counties is racially polarized, and that, absent special circumstances, minority voters in those counties would be unable to elect candidates of their choice in majority-white districts. Appellees cite no persuasive evidence to the contrary.[3]

c. Appellees next contend (Br. 56) that the drawing of an Hispanic opportunity district in Harris County

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[3] In arguing that there is not polarized voting, appellees repeatedly quote from a report that was not before the district court. Br. 2-5. They also rely on several newspaper articles that were not before the district court. Br. 5, 7. Because that evidence was not presented to the district court, it is not properly before this Court.

goes beyond what is necessary to prevent underrepresentation of the Hispanic citizen voting age population throughout the State. In this case, however, the State sought to prevent the dilution of the Hispanic vote *in Harris County*. For that purpose, the relevant proportional representation inquiry is whether the creation of an Hispanic opportunity district in Harris County was necessary to prevent the underrepresentation of Hispanics in Harris County. *DeGrandy*, 114 S. Ct. at 2662. As we discuss in our opening brief (Br. 30), if the State had not created an Hispanic opportunity district in Harris County, Hispanics in that area would have been substantially underrepresented. Appellees do not suggest otherwise.[4]

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[4] Appellees' argument (Br. 56) that Hispanics would have achieved statewide proportional representation, even absent the creation of an Hispanic opportunity district in Harris County, relies on a comparison to the Hispanic proportion of the State's CVAP (18.4%). The creation of an Hispanic opportunity district in Harris County was necessary to prevent statewide underrepresentation, however, if a comparison is made to the Hispanic proportion of total population (22.6%) or voting age population (VAP) (22.4%). This Court has not yet decided whether total population, VAP, or CVAP, should be used to measure the proportionality of representation. See *DeGrandy*, 114 S. Ct. at 2655-2656, 2660 n.14. Because the State's plan sought to forestall the dilution of the Hispanic vote in Harris County, that issue need not be resolved in this case. In Harris County, Hispanics constitute 23% of the total population (U.S. Br. 6), 20% of the VAP (U.S. Exh. 1084), and 13.3% of the CVAP. Under any of those measures, the creation of one Hispanic opportunity district in Harris County (which has sufficient population to support five districts) was necessary to prevent the underrepresentation of Hispanics in that area.

d. Appellees contend (Br. 53) that a violation of Section 2 cannot be established unless there is proof that minorities have been essentially shut out of the political process. The text of Section 2, however, prohibits all voting practices that provide minority voters with "less" opportunity to participate and to elect than other members of the electorate, not just those that shut out minority voters completely. 42 U.S.C. 1973(b). Consistent with the text of Section 2, this Court in *Gingles* rejected the interpretation suggested by appellees here. In that case, the Court affirmed a finding of vote dilution in violation of Section 2, even though black voters in some of the multimember districts at issue had been able to elect some candidates of their choice. 478 U.S. at 74-75 & nn.35-36. Even if appellees' standard were the correct one, it would not assist them here. If the State had not created minority opportunity districts in Dallas and Harris Counties, minority voters from those two areas would have been effectively shut out of any opportunity to elect a representative of their choice.

3. Appellees contend (Br. 60-68) that the districts at issue in this case do not satisfy the narrow tailoring requirement for two reasons. Neither is persuasive.

a. Appellees first contend (Br. 61-64) that a plan cannot be narrowly tailored unless it conforms to traditional redistricting criteria, such as compactness and respect for political subdivisions. Because strict scrutiny applies only when "the legislature [has] subordinated traditional race-neutral districting principles * * * to racial considerations," *Miller*, 115 S. Ct. at 2488, however, acceptance of appellees' narrow tailoring argument would mean that any district subject to strict

scrutiny would automatically fail the narrow tailoring prong of that inquiry. That result would be inconsistent with this Court's recent admonition that strict scrutiny is not "strict in theory, but fatal in fact." *Adarand Constructors, Inc.* v. *Peña*, 115 S. Ct. 2097, 2117 (1995). Appellees' argument that narrow tailoring requires adherence to traditional redistricting practices is also inconsistent with this Court's statement in *Shaw*, 113 S. Ct. at 2827, that a State is not constitutionally required to follow any particular set of traditional redistricting practices.

As we explain in our opening brief (Br. 36-37), a substantial departure from traditional redistricting practices may be evidence that a State has used race in drawing district lines more than is necessary to satisfy its compelling interests. In this case, however, no such inference was justified. Although the State's remedial districts are irregular in shape, those irregularities were necessary to create districts that complied with Section 2 while simultaneously serving the State's interest in protecting incumbents. See U.S. Br. 38.

At bottom, appellees' argument reduces to the contention accepted by the district court that a State seeking to comply with Section 2 is constitutionally required to give greater weight to compactness than to protecting incumbents. See J.S. App. 91. That contention conflicts with this Court's repeated holdings that the State has the power to establish its own redistricting priorities. See U.S. Br. 40-41 (citing cases). A requirement that a State give greater priority to compactness than to protecting incumbents would also create a substantial disincentive to voluntary compliance with Section 2. It is unrealistic to expect that States will comply voluntarily

with Section 2 if they must sacrifice their interest in protecting incumbents in order to do so. Appellees make no attempt to reconcile their position with this Court's decisions holding that States may determine their own redistricting priorities or with the strong policy in favor of voluntary compliance with the law.

b. Appellees also argue (Br. 64) that the challenged districts are not narrowly tailored because they do not "substantially include the particular minority voters whose constitutional and statutory rights they are designed to protect." That argument is without merit. The minority voters whose Section 2 rights the State has sought to protect are blacks in Dallas County, blacks in Harris County, and Hispanics in Harris County, and the State's remedial districts include a sufficient number of those voters to permit each group to have the potential to elect a candidate of its choice. It is true that not all members of those groups are in the State's remedial districts. But that is almost always true in vote dilution cases. See *Gomez* v. *City of Watsonville*, 863 F.2d 1407, 1414 (9th Cir. 1988), cert. denied, 489 U.S. 1080 (1989); *McGhee* v. *Granville County*, 860 F.2d 110, 118-119 (4th Cir. 1988); *Gingles* v. *Edmisten*, 590 F. Supp. 345, 380-384 (E.D.N.C. 1984) (three-judge court), aff'd in part, rev'd in part *sub nom. Thornburg* v. *Gingles*, 478 U.S. 30 (1986). Such a result is "a necessary concomitant of the inevitably rough-hewn, approximate redistricting remedy," in which some members of a politically cohesive minority group benefit directly by being included in a remedial district, while others benefit indirectly by having their distinctive interests taken into account by the person elected from the remedial district. *McGhee*, 860 F.2d at 118-119 & n.9.

Appellees contend (Br. 65-66) that the class of Section 2 victims is limited to those minority voters who reside in the area in which members of the minority group are most highly concentrated, and that the State's remedial districts do not substantially include those voters. The victims of vote dilution, however, are not just those persons who reside in the area in which minority voters are most highly concentrated; the victims include all members of the politically cohesive minority group. *McGhee*, 860 F.2d at 118-119 & n.9. In this case, the politically cohesive minority groups are blacks in Dallas County, blacks in Harris County, and Hispanics in Harris County.

In any event, the State's remedial districts include substantial numbers of those persons who reside in the areas in which minority voters are most highly concentrated. As appellees note (Br. 65), the minority community in Dallas County is most heavily concentrated in South Dallas. That community forms the core of District 30. See J.A. 335. In fact, virtually all of the areas of high black population concentration (more than 70% black population) in South Dallas are in District 30. See *ibid.*; J.A. 150. The situation is similar in Harris County. There are three principal areas of high black population concentration (more than 70% black population) in Central Harris County. J.A. 151. Under the State's plan, two of those areas are almost entirely located within District 18, and the third area is divided between District 18 and District 25. *Ibid.* In addition, virtually all areas of high Hispanic population concentration (more than 70% Hispanic population) in Central Harris County are located within District 29. J.A. 152. Thus, even under

appellees' proposed victim-specificity test, the State's remedial plan is narrowly tailored.

4. Finally, appellees argue (Br. 58-59) that the State had no interest independent of Section 2 in creating the minority opportunity districts at issue here. But as we explain in our opening brief (Br. 32-35), the creation of those districts furthers the State's compelling interest in ameliorating the effects of polarized voting and preventing substantial underrepresentation of blacks in Dallas County and blacks and Hispanics in Harris County. Appellees seek to disparage the State's attempt to ameliorate the effects of polarized voting by labeling it an attempt to remedy societal discrimination. Br. 58-59. That characterization is incorrect. As we explain in our opening brief (Br. 34), the State could reasonably conclude that the severe racial bloc voting present in the State today is attributable, at least in part, to the State's long history of discrimination in voting. The State could also reasonably regard bloc voting as evidence of racial discrimination practiced by private parties. *Ibid.* In seeking to ameliorate the consequences of polarized voting, the State was therefore attempting to remedy concrete discrimination and its continuing effects, not amorphous societal discrimination.

* * * * *

For the foregoing reasons and those stated in our opening brief, the judgment of the district court should be reversed or, alternatively, the judgment should be vacated and the case remanded for a decision under the correct legal standards.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

NOVEMBER 1995

Supreme Court, U.S.
FILED
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No. 94-805, 94-806, and 94-988

In the Supreme Court of the United States
OCTOBER TERM, 1995

GEORGE W. BUSH, Governor of Texas, *et al.*,
Appellant-Applicants,

vs.

AL VERA, *et al.*, *Appellee-Respondents*

REV. WILLIAM LAWSON, *et al.*,
and
ROBERT REYES, *et al.*, *Appellants*,

vs.

AL VERA, *et al.*, *Appellees*.

UNITED STATES OF AMERICA, *Appellants*,

vs.

AL VERA, *et al.*, *Appellees*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

STATE APPELLANTS' REPLY BRIEF ON THE MERITS

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November 1995

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I.
THE APPELLEES HAVE ARGUED EVIDENCE THAT IS OUTSIDE THE RECORD

At pp. 2-5 the Appellees cite extensively from a document that was not in evidence before the trial court. That document, a commentary in support of Texas' original state House of Representatives and Senate districting plans, was not offered into evidence. Of course, neither this Court nor the trial court had the benefit of any testimony about the document. It, therefore, is highly improper for the Appellees to file it with this Court and quote extensively from it.[1] This Court has consistently condemned attempts to persuade the Court to decide a case based upon evidence that was not before the court below and not of record in the case

In addition to this improper use of non-record evidence, the Appellees repeatedly quote from newspaper articles that were not in evidence, *see,* Appellees' Brief at 5-7, and in some cases quote from newspaper articles published long after this case was tried. *Id.* at 5, 7. Finally, the Appellees cite cases from other states as if the facts found in those cases were facts found in this case. *Id.* at 30-31.

While the State of Texas believes that all points of view should be heard on the issues involved in this appeal, especially since they implicate policy questions the resolution of which will affect not only Texas but all states in the country, the State of Texas nonetheless must object to the citation and use of nonrecord evidence. Such tactics do no justice to the appropriate resolution of these important and

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[1] Moreover, however optimistic the commentary is about the status of minority voters in Texas, the very plans that the commentary was intended to support were found to violate both state and federal equal protection rights of minority voters. *Terrazas v. Slagle,* 789 F.Supp. 828 (W.D. Tex. 1991). Both the state and federal courts enjoined the implementation of the original state House of Representatives and Senate plans. As a result, the legislature passed new plans that did more to protect the voting rights of Texas minority voters.

critical issues. Therefore, the State of Texas asks this Court to ignore and/or to strike those portions of the Appellees' brief that contain citations to, and arguments based on, nonrecord evidence. See, e.g., Rules of the Supreme Court of the United States, R. 24 (6); *Wygant v. Jackson Board of Education*, 476 U.S. 267, 278 n. 5 (1986).

II.
THE APPELLEES HAVE CHANGED THEIR THEORY OF THE CASE ON APPEAL

For the first time in this case the Appellees have argued that the Voting Rights Act did not require the creation of CDs 18, 29, and 30 as majority-minority districts. This was not their position in the trial court. Indeed, the Appellees' expert, Ronald Weber, proffered a plan containing the same districts as those at issue here, in the same geographical areas of the state, albeit with different looking shapes, explaining:

> 47. . . . I have created an alternative Congressional districting plan for the State of Texas to show that a more narrowly tailored plan can be constructed that pays more attention to traditional districting principles while still enabling African-American and Hispanic voters to elect candidates of choice from an equal number of Congressional districts as in the current plan.
>
> 48. Weber Plan 2 which will be offered as one of plaintiffs' exhibits at trial includes two African-American districts -- one in Dallas County and one in Harris County; six Hispanic districts -- . . . one district in Harris

> County subject to substantial African-American and Hispanic influence.

Joint App. at 186.

Similarly, the Owens-Pate Plan, Pl. Ex. 33, which the Appellees proffered to the court below as an alternative acceptable plan, contained the same districts as those at issue here, in the same geographical locations in the state, albeit with different looking shapes. The Owens-Pate Plan explicitly approves of the creation of a Black district in the Dallas-Fort Worth (Metroplex) area in order "to give Dallas' Black population representation." Pl. Ex. 33 at 4. It also creates an Hispanic district in "near north and southeastern Harris County", *id.* at 5, explaining that "creation of a Hispanic district reflects the fact that Harris County's Hispanic population is greater than its Black population, and Blacks already have a district in Harris County." *Id.*

Unlike Georgia, Louisiana, and North Carolina, Texas was not forced by the Department of Justice to create additional majority-minority districts.[2] Rather, Texas made its own determination of how many majority-minority districts it would create and in what parts of the state it would create them.[3] It arrived at its decision after holding numerous public hearings and after extensive debate in the legislature.[4]

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[2] Indeed, during the legislative process, alternative plans that would have created additional districts with a majority that was African-American were proposed at different times, but each was rejected by the legislature. *See,* Testimony of Paul Colbert, St. Ex. 15, Joint App. at 253. Each of these rejected plans would have strung together dispersed populations from different metropolitan areas that had little in common but the color of their skin.

[3] The Department of Justice pre-cleared HB 1, the congressional redistricting plain at issue in this appeal, without objection. Jt. App. at 343.

[4] For the Appellees to argue that Texas created these districts because of pressure from the Department of Justice, *see* Brief for

Testimony at these public hearings overwhelmingly supported the creation of new majority-minority districts in Dallas and Houston and no witnesses argued that majority-minority districts should not be created or were not necessary to permit the minority communities in those areas the opportunity to elect their candidates of choice. In the legislature the battles over the particularities of where lines would be drawn were often brutal, but no dissenting voices from either party were raised concerning the goal of making these new districts majority-minority.

At trial the Appellees did not disagree with this goal,[5] and the alternative plans advocated by the Appellees all included the same number of majority-minority districts in the same parts of the state.[6] Only now, before this Court, have the Appellees argued that Texas' goal of creating additional new majority-minority districts in Houston and Dallas was impermissible. *See*, Brief for Appellees at 24.

The Appellees now appear to argue that the Constitution prohibits creating majority-minority districts unless those districts are "accidentally" created by some color-blind process. Why is this so? If history is any guide, creation of only influence districts will mean no minority members elected to Congress from Texas.

Although Texas has far more minority officeholders than ever before, the fact still remains that since Reconstruction, of the twenty-five state offices filled by statewide election, only one has been won by an African American, a judge of the Texas Court of Criminal Appeals,

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Appellees at 47, is factually incorrect and nothing short of a flight of fancy.

[5] *See*, testimony of Rep. Kent Grusendorf quoted in the State Appellants' Brief on the Merits at 32-33.

[6] *See*, Weber Plan 2, Jt. App. at 161 and 186, and the Owens-Pate Plan, Plaintiffs' Ex. 33, profferred by Appellees as acceptable alternative plans each containing the majority-minority districts at issue here, albeit with different looking shapes.

and only two have been won by Hispanics, the attorney general and a justice of the Texas Supreme Court. Moreover, with extremely rare exceptions, minority state legislators have been elected only from majority-minority districts, and with no exceptions, *every* minority congressional representative has been elected from a majority-minority district. Thus, although it is clear that the creation of majority-minority election districts in Texas has begun to open the process to minority voters and candidates, it is far from clear that Texas would continue to elect members of ethnic and racial minorities if these majority-minority districts were to be abolished.

In light of this history, and in light of prior court findings, community hearings, and experience that all showed cohesive minority voting and polarization in Dallas and Houston, the legislature reasonably concluded that minority voters still faced the probability of vote dilution in both metropolitan areas.

In Texas, Democrats and Republicans alike agreed that CD 18 needed to be maintained as an African-American opportunity district, and that CDs 29 and 30 needed to be created as Hispanic and African-American opportunity districts, respectively. At trial, all of the Plaintiffs and their lay and expert witnesses agreed with these goals.

In light of this unanimity, it should not be surprising that Texas achieved its goals. The result here was achieved after a delicate balancing of § 2 requirements, community wishes, partisan politics, incumbent protection, and one-person, one-vote requirements. None of these interests was "minimally served." Rather, they were all harmonized and accommodated to each other.

III.
THE LEGISLATURE HAD A STRONG BASIS IN EVIDENCE TO BELIEVE THAT MAJORITY-MINORITY DISTRICTS WERE NECESSARY UNDER THE VOTING RIGHTS ACT

The Appellees assert that the legislature had no information before it at the time it drew the present congressional districts that indicated to it an obligation to draw new majority-minority districts in Dallas and Houston. This bald assertion is flatly contradicted by the record evidence at trial.

Before beginning the actual drawing of congressional district lines in 1991, the Texas Legislature had been thoroughly briefed by the Texas Legislative Council about its legal obligations. A series of briefing materials known as the "gray books" had been published and given to the members of the legislature well in advance of the enactment of the plan. See Pl. Ex. 13, especially Pl. Ex. 13C. These gray books represented an exhaustive examination of the redistricting process and of both state and federal constitutional and legal requirements that applied to redistricting in 1991.

In addition, the legislature held numerous public hearings that continued into the 1991 legislative session.[7] The House and Senate redistricting committees held joint public hearings from February through September, 1990 at locations throughout the state.[8] Among the information that the

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[7] The testimony offered at these public hearings literally fills several boxes. It is contained within Texas' submission to the Department of Justice in order to obtain preclearance under section 5 of the Voting Rights Act. At trial this section 5 submission material was admitted into evidence as Pl. Ex. 3. The minutes of these hearings, which include summaries of this testimony, U.S. Ex. 1086, was also admitted into evidence at trial. Even this summary exhibit is lengthy.

[8] These committee hearings were held in Lubbock, Amarillo, Corpus Christi, El Paso, Midland/Odessa, Houston, Beaumont, Tyler,

committees specifically sought at these hearings was information about the "history of minority participation in the political process, including minority voter registration, minority voter turnout, and minority candidacy for office," the "extent of bloc voting, coalitional voting, and crossover voting by racial or language groups; political cohesiveness of identifiable racial or language groups," and information about the "history of discrimination in the area, particularly discrimination on account of race or language." U.S. Ex. 1086, Minutes of Senate Select Committee on Legislative Redistricting January 26, 1990.

At the hearing held in Houston on June 1, 1990, the minutes indicate that the committees received oral and written testimony from more than twenty witnesses. U.S. Ex. 1086. Several of these witnesses testified that the Hispanic community was cohesive,[9] that reluctance by Anglos to be represented by minority candidates and bloc voting were still present,[10] and that Hispanic voters in Houston were submerged when they were paired with African-American voters in a district.[11] Not one witness suggested that majority-minority districts were unnecessary in Houston or that racially polarized voting was absent.

At the hearing held in Dallas on July 14, 1990, the committees received oral and written testimony from more than fifty witnesses. Nearly all of these witnesses supported the creation of a new majority-minority congressional seat in

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Fort Worth, Dallas, Laredo, Edinburg/Harlingen, San Antonio and Austin. *See*, U.S. Ex. 1086.

[9] U.S. Ex. 1086, June 1, 1990 Houston Hearing Summary at 6.

[10] *Id.* at 11, 18.

[11] *Id.* at 27.

Dallas,[12] and many of them testified about the cohesiveness of the minority communities,[13] and the continued existence of racially polarized voting.[14]

In 1991, the legislative redistricting committees began a new round of hearings. The Senate Committee of the Whole on Redistricting returned to Houston for a hearing on April 5, 1991 and received additional evidence and testimony. The testimony from the Hispanic community at this hearing was particularly impassioned:

> Hispanics comprise over a quarter of the county's population . . . [y]et the only thing we have to show for our numbers is two Hispanic members of the Texas House of Representatives. Under the current boundaries and under the current political situation, it would be very difficult to elect additional Hispanics. . . . In some of these areas we now have sizable populations, but do we have political impact in these districts? No. We have to remember that this growth was not there 10 years ago. So those that ran for and won their offices did so without much help from the Hispanic community and the Hispanic voter. . . . Perceptions are therefore created that Hispanics are not a factor in the political process, when in fact the process gives very little incentive for Hispanics to participate.

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[12] U.S. Ex. 1086, July 14, 1990, Dallas Hearing Summary at 14, 16, 18, 21, 22, 24, 26, 28, 30, 33, 34, 35, 36, 38, 39, 43, 46, 47, 50, 53, 54, 59, 61, 62, 63.

[13] *Id.* at 33, 44, 48.

[14] *Id.* at 10, 12.

U.S. Ex. 1086, Minutes of the Committee of the Whole on Redistricting, April 5, 1991, Tape 1 at 14. Other speakers seconded these comments. *Id.*, Tape 2 at 4, 10. At the same hearing the following statement was made:

> I feel the opportunity to create additional Hispanic districts not only exist[s] but also must be acted upon. . . . Specifically, the Republican Party of Texas supports the creation of a second minority Congressional district in Harris County. A district which would be predominantly Hispanic.

Id. at 19.

These hearings were attended by many members of both houses of the legislature and summaries were prepared for members who could not be present. In addition, of course, committee hearings were held during 1991 on all of the redistricting plans. *See*, U.S. Ex. 1092.

Speaker after speaker during these 1990 outreach hearings and during the 1991 legislative committee hearings gave testimony that the minority communities in Dallas and Houston were not yet fully included in the political process. They also gave testimony about the continuing existence of racially polarized and bloc voting in both metropolitan areas. The legislature would have ignored this testimony at its peril.

Moreover, in 1991, *Williams v. City of Dallas*, 734 F.Supp. 1317 (N.D. Tex. 1990), contained the most current judicial examination of racially polarized voting in Dallas. *Williams* involved a § 2 challenge to the City of Dallas' then-current city council election scheme that called for election of eight members from districts and three members at large. The *Williams* court found that the 8-3 electoral scheme violated § 2 because it diluted the voting rights of both African-American and Hispanic voters in Dallas. The court extensively examined electoral history in Dallas and made extensive

findings of fact. These findings were summarized by the court:

> The history of minority participation in the political process of Dallas is not one of *choice*; it is a record of what blacks and Hispanics have been *permitted* to do by the white majority.
>
> This history has three distinct periods: *the century* of total exclusion when intentional discrimination prevented any minorities from serving on the Dallas City Council; *the decade* of the Citizens Charter Association's selection of those blacks and Hispanics who would be permitted to serve as at-large members of the Council; and *the 15-year period of the 8-3 system*, which permitted two blacks to serve as single-district representatives on the City Council . . . but which (with the exception of 1980-83) denied minorities the right to elect any other single-district Council Members . . . and which denied both blacks and Hispanics access to any of the 3 at-large seats without the support, and permission, of the white majority in North Dallas.

Williams, 734 F.Supp. at 1320. (emphasis in original). The Court specifically found that African-American voters in Dallas were politically cohesive, *id.* at 1387-93, that white bloc voting usually defeated the choice of the African-American community, *id.* at 1393-97, and that the totality of the circumstances compelled the conclusion that the existing 8-3 election plan violated § 2, *id.* at 1401-09. The court also noted that an August 1989 election on a proposed 10-4-1 election plan for the Dallas City Council was "the most racially divisive election in the history of Dallas." *Id.* at 1410.

To suggest that the legislature was simply unaware of these findings made less than one year before it was to draw a new congressional plan is incredible. To suggest that the legislature should have ignored these findings is equally incredible. *See*, Appellees' Brief at 50, n. 47.

Finally, it is absurd to suggest that state legislators are unaware of the voting behavior that has historically occurred in their communities. Successful elected officials are extremely sensitive to even the mildest shifts in voting patterns.

Appellees' assertion that the members of the Texas legislature acted with no information about the existence of cohesive minority groups in Dallas and Houston, with no information about bloc voting by the white majorities in those communities, with no information about the degree of racial polarization in voting in those communities, and with no awareness of how the totality of the circumstances affected the ability of the African-American and Hispanic communities to elect their candidates of choice simply ignores both the record in this case and common sense. Testimony of Paul Colbert, Joint App. at 252.

The Appellees also argue strenuously that the legislature could not have believed in 1991 that racially polarized voting was occurring in congressional elections in Dallas and Houston because the Fifth Circuit Court of Appeals determined in 1993 that judicial elections in Texas are primarily determined by party affiliation rather than race or ethnicity. See, *LULAC v. Clements*, 999 F.2d 831 (5th Cir. 1993)(en banc). However, the *LULAC* court noted that

> judicial elections are low-profile elections in which the voters know little more about the candidates than what they read on the ballot. The voters, therefore, will make their choice based upon the information that the ballot contains--party affiliation.

999 F.2d at 978-79. With respect to both Dallas and Houston, the court concluded that political affiliation and not race was the primary determinant of judicial elections.

The *LULAC* decision is irrelevant to congressional redistricting for two reasons. First, judicial elections are inherently different from the much higher profile congressional elections. Unlike Texas judicial elections, where, in Dallas and Houston especially, there may be as many as a dozen or more judges running county-wide for their seats, congressional elections are much higher profile, more partisan affairs involving usually no more than two candidates at the general election. Second, *LULAC* was decided well after the legislature had completed its congressional redistricting. These conclusions about judicial elections, reached two years after the legislature drew the present congressional plan, simply do not show that the legislature's conclusions about congressional elections had no substantial support.

IV.
THE TRIAL COURT IMPROPERLY ELEVATED SHAPE TO A CONSTITUTIONAL REQUIREMENT

The Plaintiffs challenged 24 of Texas' 30 congressional districts as unconstitutional racial gerrymanders, including six of Texas' nine majority-minority districts. Although the process used by the state in the drawing of all nine of these districts was identical, although the factors weighed by the state were identical, and although the result of the legislature's efforts was nine districts in which a single minority group constituted a majority, the trial court held unconstitutional only CDs 18, 29, and 30 because the evidence showed that more geographically compact majority-minority districts could have been drawn in the Dallas and Houston areas. The trial court explicitly held that districts intended to comply with the state's obligations under the Voting Rights Act are not narrowly tailored unless they have the "least

possible amount of irregularity in shape." *Vera v. Richards*, 861 F.Supp. 1304, 1343 (S.D. Tex. 1994).

This holding by the trial court was legal error. The trial court misread this Court's opinion in *Shaw v. Reno*, 509 U.S. ____, 113 S.Ct. 2816 (1993), and did not have the benefit of this Court's opinion in *Miller v. Johnson*, ___ U.S. ___, 115 S.Ct. 2475 (1995). *Miller* clarifies that

> Shape is relevant not because bizarreness is a necessary element of the constitutional wrong or a threshold requirement of proof, but because it may be persuasive circumstantial evidence that race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale in drawing its district lines.

115 S.Ct. at 2486.

It is clear that Texas places little value upon regular and compact shape. The Appellees' expert, Dr. Ron Weber, analyzed the compactness of all thirty of Texas' congressional districts. He concluded that twenty of the districts were not compact. Final Report of Ronald E. Weber, Pl. Ex. 36, Joint App. at 169. This included both majority-minority and majority Anglo districts. He further noted that six districts from Texas - CDs 3, 6, 18, 25, 29 and 30 - are well below the lowest bright lines for measuring perimeter or dispersion compactness, *id.* at 170, and four additional districts - 4, 14, 21 and 23 - have very low population compactness scores. *Id.* Of these ten districts that score in the lowest category on one of the three compactness measures, six - CDs 3, 4, 6, 14, 21, and 25 - are majority Anglo. *See*, Joint App. at 144. Indeed, Weber concludes:

> The fact that the compactness scores for one-third of the state's districts fall well below the brightlines or cutoff point for the two studies

> substantiates that the total plan is not compact and has a very unusual configuration both in terms of geography and population concentrations.

Joint App. at 171.

Despite this evidence of lack of geographical compactness throughout the state, the trial court found no constitutional infirmity in these other districts. Rather, the trial court imposed a requirement of geographical compactness only upon CDs 18, 29, and 30. Rather than recognizing that a state may legitimately choose its own priorities for various redistricting principles, the trial court imposed its own choices, at least when a district is drawn to comply with the Voting Rights Act. It thus required these three remedial districts to meet requirements that this Court has not required districts generally to meet. This holding by the trial court was legal error.

Moreover, applying the trial court's legal standard to the other three challenged majority-minority districts would have invalidated them as well. Even the most cursory examination of the map of Texas' congressional districts, Pl. Ex. 34B(1), Joint App. at 144, shows that more geographically compact shapes are possible for these majority-minority districts. Other district courts have recognized that irregularly shaped majority-minority districts are permissible when other non majority-minority districts in the plan are similarly irregular. In *Jeffers v. Clinton*, 730 F.Supp. 196 (E.D. Ark. 1989), the court approved alternative plans that contained majority-minority districts that looked strange. The court concluded that the

> alternative districts are not materially stranger in shape than at least some of the districts contained in the present apportionment plan. The one-person, one-vote rule inevitably requires that county lines and natural barriers

> be crossed in some instances, and that cities and other political and geographic units be split in others.

Id., 730 F.Supp. at 207.

V.
THE RECORD EVIDENCE SHOWS THAT THESE DISTRICTS HAVE A SENSE OF COMMUNITY AND ARE FUNCTIONALLY COMPACT

The Appellees assert that this record contains no evidence that these districts have a "sense of community." Appellees' Brief at 29. This assertion is all the more incredible when one realizes that CDs 18 and 29 are located entirely within Harris County and primarily, but not exclusively, located within the City of Houston. CD 30 is almost entirely located within Dallas County. Moreover, the fact is, and the record evidence shows, that the districts are compact. *See, e.g., DeWitt v. Wilson,* 856 F.Supp. 1409, 1414 (E.D. Cal. 1994), *aff'd* __ U.S. __, 115 S.Ct. 2637 (1995). In *DeWitt,* the district court stated that:

> The territory included within a district should be contiguous and compact, taking into account the availability of transportation and communication. In addition, social and economic interests common to the population of an area [e.g.] an urban area, a rural area, an industrial area or an agricultural area should be considered.
>
> . . . Compactness does not refer to geometric shapes but to the ability of citizens to relate to each other and their representatives and to the ability of representatives to relate effectively to their constituency. Further, it speaks to

> relationships that are facilitated by shared interests and by membership in a political community, including a county or city.

Id., 856 F.Supp. at 1414 (internal quotations omitted).

The evidence in this case affirmatively shows that the populations of CDs 18, 29, and 30 share a sense of community. The demographic data about CD 30 shows "that there is one economy, one transportation system, one media/communications system and one higher educational system," St. Ex. 18, Joint App. at 284, and that "the District 30 population[] tends to be younger, less well educated, in lower socio-economic groups, with higher unemployment and a greater proportion of non-white" than other congressional districts in the Dallas area. *Id.* at 285.

Similarly, the demographics of CDs 18 and 29 in Harris County show that they share "political concerns with regard to education, employment and transportation issues." *Id.* at 289.

In addition to this demographic data, partisan election indices indicate that these districts have much in common. St. Ex. 9A(1), Joint App. at 194, clearly indicates the overwhelming Democratic voting pattern of both CD 18 and CD 29, and the overwhelming Republican voting pattern of adjoining districts. These districts clearly separate Democratic and Republican voters in Harris County and place each group within politically homogeneous districts. This result manifests the legislature's goal of drawing districts that would protect incumbent congressmen.

St. Ex. 9A(2) displays the same information in Dallas. The tendrils of CD 30 reach out from a heavily Democratic district to encompass virtually all of the Democratic areas of Dallas County. Of course, the core area is the area that was so bitterly fought over by the two incumbents, Democratic Congressmen Bryant and Frost (CDs 5 and 24, respectively), and the major legislative aspirant for the CD 30 seat, then-Sen. Eddie Bernice Johnson. Like Harris County, the districts in

Dallas County precisely place voters into politically homogeneous districts.

This evidence simply fails to show that these districts lack a sense of community. In fact, the populations residing in these districts share many common concerns and viewpoints. Appellees can point to no evidence to substantiate their assertion that these districts lack a sense of community.

VI.
THE SPLITTING OF VOTING TABULATION DISTRICTS DOES NOT MANIFEST A RACIAL PURPOSE

The Appellees make much of the fact that the legislature split VTDs, suggesting that the number of split VTDs manifests a racial purpose. Once again, the Appellees are wrong. In order for the legislature to begin the redistricting process, the Texas Legislative Council aggregated census blocks which it obtained from the U.S. Census Bureau into voting tabulation districts or "VTDs." These census block aggregations or VTDs were constructed in a manner to approximate, albeit roughly, local election precincts created by local governments in all of the cities and counties in the state in order to make more precise the analysis of the political effect of proposed redistricting plans. *See*, Pl. Ex. 13A at 22. Local election precincts are always reconfigured after the redistricting process.

The Appellees' theory that the splitting of VTDs manifests a racial purpose has no factual basis. For example, in CD 18, 223,491 people resided within whole VTDs, Pl. Ex. 34Q at 85, and 342,726 lived within split VTDs. *Id.* at 90. The racial/ethnic breakdown by percent of population of those living within whole VTDs is 65% Black, 9.5% Hispanic, 23.8% Anglo, and 2.4% other. *Id.* at 85. The percentages for

those residing within split VTDs is 41.8% Black, 19.1% Hispanic, 36.1% Anglo, and 3.8% other. *Id.* at 90.[15]

These statistics do not establish that VTDs were split for racial purposes. Indeed, these statistics show that a smaller percentage of Blacks reside within the split VTDs included in the district than reside within whole VTDs. Moreover, 36% of the population of these split VTDs is Anglo. These statistics hardly manifest a racial purpose.[16]

VII.
CONCLUSION

Because the court below erred in holding CDs 18, 29, and 30 unconstitutional, the State Appellants respectfully request that this Court reverse the district court's judgment and render judgment for the Appellants.

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[15] For the same information concerning CD 29, *see*, Pl. Ex. 34Q at 150, 154, and for CD 30, *see*, Pl. Ex. 34Q at 156, 158 and 162.

[16] The Appellees also make much of the number of precincts created as a result of this redistricting plan. The number of precincts resulted from the rush to create the various plans, with little time spent trying to conform the lines of the plans for different offices. Testimony of Paul Colbert, Joint App. at 254-55.

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Supreme Court of the United States

OCTOBER TERM, 1995

REV. WILLIAM LAWSON ET AL., APPELLANTS,

ROBERT REYES, ET AL., APPELLANTS

v.

AL VERA, ET AL., APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

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REPLY BRIEF OF APPELLANTS

SUMMARY OF ARGUMENT

In our opening brief, we drew from *Miller*, *DeWitt* and *Shaw*,[1] several conclusions of law about the meaning of *Miller's* "dominant and controlling rationale," 115 S. Ct. at 2486, standard for triggering strict scrutiny:

1. A deliberate intent to create a majority-black or majority-Hispanic district does not mean that race was the "dominant and controlling rationale."[2]

2. Where the decision to create a minority opportunity districts is based on a large African-American or Hispanic population concentration, sufficient to permit election of a candidate of choice from a reasonably compact district, race was not the "dominant and controlling rationale," but instead played a role along with compactness.[3]

3. An irregularly shaped, majority-black or majority-Hispanic district is not per se subject to strict scrutiny; instead *Miller* requires examination of *why* the shape is irregular. 115 S. Ct. at 2490 (shape is not dispositive but may be evidence of motive).

We also set out in our opening brief several undisputed facts:

1. Reasonably compact versions of Districts 18, 29 and 30, with substantially the same racial and ethnic compositions, were available to the State.

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[1] *Miller v. Johnson*, 115 S. Ct. 2475 (1995); *DeWitt v. Wilson*, 115 S. Ct. 2637 (1995), *affirming in part, dismissing in part*, 856 F. Supp. 1409 (E.D. Calif. 1994); *Shaw v. Reno*, 113 S. Ct. 2816 (1993).

[2] *Miller*, 115 S. Ct. at 2488 (plaintiff must prove that the Legislature subordinated compactness and other race-neutral districting principles to racial considerations).

[3] *See* Lawson-LULAC Br. 23-26 (deliberate creation of majority-black and majority-Hispanic districts in California plan affirmed in *DeWitt*).

2. The State reached its intent to create Districts 18, 29 and 30 as majority-black or majority-Hispanic based upon knowledge that sufficiently large population concentrations of African Americans and Hispanics existed to enable these minority groups to elect representatives of their choice from reasonably compact districts.

3. The reason the State chose irregular over regularly shaped versions of Districts 18, 29 and 30 was to protect white incumbents and to aid white Senator Gene Green.

If the above accurately describes both the law and the facts, then the conclusion seems inescapable that race was not the legislature's "dominant and controlling rationale" either in the decision to create Districts 18, 29 and 30 as minority opportunity districts (because compact population concentrations played an equal role) or in the shapes of those districts (because incumbent protection and other non-racial factors caused the shapes). This conclusion is bolstered by the many other reasons we identified as making strict scrutiny inapplicable,[4] to which appellees make no reply.

We search the Brief for Appellees in vain to find a dispute with the legal conclusions, the logic or the facts above. We find no real dispute, other than the disingenuous claim that incumbents impacted the district lines only "at the margins," discussed in more detail below. When the rhetoric is cleared away, the Brief for Appellees seems to rely on five propositions of law, which we shall show to be untenable:

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[4]Other indicia that race was not the legislature's "dominant and controlling rationale" include the fact that minority residents were included because they wanted to be in the districts and they were likely to vote for the incumbent or aspiring incumbent; that the districts include persons with "actual shared interests," who "live together in one community," *Miller*, 115 S. Ct. at 2481, 2490; that majority-white districts are highly irregular in shape; and that other minority district proposals were rejected by the Legislature.

1. The intent to create a minority opportunity district, formed "at the beginning of the process," constitutionally taints everything that follows.

2. An intent to create a minority opportunity district can be accomplished only with compact districts, even if the State has non-racial reasons to use an irregularly shaped district instead.

3. An irregularly shaped, minority opportunity district in which some of the irregular lines correlate with racial population patterns is per se subject to strict scrutiny, without regard to the causes that explain why irregular lines came to exist.

4. Protection of incumbents is not a legitimate state interest if it leads to irregular district shapes.

5. In Texas, protection of white incumbents was accomplished by "assigning voters to congressional districts based on race," Br. Appellees 41, and therefore the adjoining minority districts are subject to strict scrutiny.

On the application of strict scrutiny, our opening brief set out the familiar "strong basis in evidence standard" for determining whether a State had a compelling interest. Appellees disagree, asserting that the State must "be right." The rest of appellees' compelling interest discussion flows from the "State must be right," standard, asserting facts under *Gingles*[5] that they claim the State got "wrong." We urge adherence to the long line of precedents upholding the "strong basis in evidence" standard, and briefly point out flaws in appellees' factual claims, including their flagrant, improper reliance on an extra-record document.

Finally, on standing, we point out that appellees have virtually conceded that the plaintiffs who live in Districts 29 and 30 have identified no particularized, personal injury.

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[5] *Thornburg v. Gingles*, 478 U.S. 30 (1986).

We also point out that failed candidate Blum has no current controversy related to his previous *candidacy*, because he has made no showing that he intends to seek election to Congress again.

I. STRICT SCRUTINY IS INAPPLICABLE

Appellees claim that the district court correctly predicted and properly applied *Miller v. Johnson*. As set out in our opening brief, the court below did not apply the *Miller* test, but rather a completely different one under which the mere combination of an intent to create a minority opportunity district, with an odd shape, triggers strict scrutiny, regardless of the motive for choosing one shape over another. Lawson-LULAC Br. 30-37. The lower court compounded its error by confusing correlations with motive in concluding that the placement of minority voters into white Democrats' districts constituted racial gerrymandering that caused the adjacent minority districts to be subjected to strict scrutiny. *Id.* The "clearly erroneous" standard of review does not apply where the court below applied the wrong legal rules.

Building on the legally erroneous test applied by the court below, appellees' brief is largely devoted to extensive "proof" of two uncontested facts: 1) that the State had a "goal" to create two African-American and one Hispanic opportunity district in Houston and Dallas; and 2) that the districts actually created are irregularly shaped. What appellees fail to provide is the *link* between the goal and the shape, a *link* that we contend logically and factually is absent in this case.

A. Deliberate Creation Of A Minority Opportunity District Does Not Mean That Race Predominated

Appellees devote inordinate attention to proving that Texas had a "goal" to create Districts 18, 29 and 30 as minority opportunity districts "from the very beginning of the

redistricting process." Br. Appellees 31.[6] Yet, *Miller* holds that where "the legislature's decision to place a significant number of voters within or without a particular district" was made in harmony with "traditional race-neutral districting principles, including but not limited to compactness, contiguity, respect for political subdivisions, or communities defined by actual shared interests," race did not predominate. 115 S. Ct. at 2488. Where, as here, the Legislature reaches its goal to place a majority of minority voters into a district on the basis of compact population concentrations and communities defined by actual shared interests, *Miller* holds that the existence of such a goal does not taint the rest of the process.

If, as appellees imply, the intentional decision to create a minority opportunity district automatically triggers strict scrutiny, all 39 majority-black congressional districts nationwide and all 19 majority-Hispanic congressional

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[6]Appellees cite as evidence of race predominance the fact that the Legislature "early on" agreed that these three districts would be created and "[d]espite fierce pressure from House incumbents concerned about their reelection prospects, Texas never wavered" from this decision. Br. Appellees 31. Appellees also fault Texas for offering "no other explanation for the racially dominant nature of these districts," *id.* at 41. Of course, these criticisms could be equally levelled at Texas' six other minority opportunity districts and many other voting rights districts.

The *Terrazas* testimony and other material cited, *e.g.*, *id.* at 9-10, 17-19, 32-33, establish only that African-American and Hispanic leaders advocated creation of some version of these three minority opportunity districts, not that the Legislature subordinated other interests to this goal. That then Senator (now Congresswoman) Johnson's and Rep. Martinez' initial proposals both were rejected because of their impact on white incumbents and an aspiring white Senator demonstrates that while minority opportunity districts may have been the primary consideration for some minority politicians, they were forced to compromise so that the State could achieve its overriding goal of protecting all 27 incumbents. Appellees' other quotations of State officials merely show that minority opportunity districts were one state objective. *E.g.*, *id.* at 32 (Sharman testimony that race was "*one* of the major reasons").

districts, as well as the thousands of majority-black and majority-Hispanic state legislative and local districts, would be subject to strict scrutiny. Few of these districts became African-American or Hispanic opportunity districts accidentally. Instead of addressing how the Court's summary affirmance of California's nine intentionally-created African-American and Hispanic opportunity districts in *DeWitt* affects this case, appellees mischaracterize the Court's action as dismissal for lack of a substantial federal question.[7]

Appellees' explanation of how their test would apply to other districts is disingenuous, to say the least. While lauding the lower court's discernment, and hailing the "manageability" of the district court's test, Br. Appellees 23, appellees "respectfully disagree" with the district court's conclusion that the other 21 challenged districts should not be subjected to strict scrutiny, *id.* at 21 n.22. They berate our concern about the scope of their test as "Chicken Little cries," *id.* at 23; yet, appellees opine that "almost all of Texas' congressional districts" "appear to be drawn exclusively to achieve the desired racial composition," *id.* at 13 & n. 12.

B. *Miller* Requires Examination Of *Why* A District's Shape Is Irregular

Appellees agree with the court below that an intent to create a minority opportunity district, combined with a district that is irregularly shaped, automatically triggers strict scrutiny, even where a compact version was available and regardless of whether the State's choice of the irregular version was motivated by non-racial goals. Br. Appellees 33. This standard is untenable under *Miller*, which clearly states that racial *motive* is the touchstone.

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[7]Br. Appellees 21, n.22. While claims other than racial gerrymandering were dismissed, "[w]ith respect to questions 1 through 4 ..., *the judgment is affirmed.*" 115 S. Ct. 2637 (emphasis added).

We also pointed out in our opening brief that the district court's failure to consider the highly irregular shapes of Texas' majority-white districts, as evidence of a general, non-racial abandonment of compactness, resulted in a double standard, treating minority voters, minority candidates and minority incumbents worse than white voters, candidates and incumbents. Appellees' brief endorses the same double standard. Appellees *agree* that the double standard exists and claim that the Fourteenth Amendment requires it, Br. Appellees 63-64. We submit that such a double standard stands the Fourteenth Amendment on its head.[8]

Appellees' suggestion that strict scrutiny is automatically required where some of a district's irregular lines correlate with racial population is equally in error. First, the evidence shows that district lines would not have been irregular but for the non-racial goal of protecting incumbents and accommodating Senator Green. Second, in building a minority opportunity district, it is no surprise that some of the district lines correlate with racial population concentrations.[9] What is of more significance is that the irregular "arms" of the districts bring in substantial majorities

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[8] *See, e.g., Miller*, 115 S. Ct. at 2497 (O'Connor, J., concurring)("the driving force behind the adoption of the Fourteenth Amendment was the desire to end legal discrimination against blacks").

[9] Appellees also complain about split VTDs. Splitting VTDs is not an evil phenomenon; it merely means that the State districted at the census block level (using census blocks, rather than the larger VTDs, as the building blocks for districts), a common practice in urban areas. In any event, the original proposals by Senator Johnson and Rep. Martinez did not split VTDs, and there is no dispute that the reason the State went to the census block level in District 29 was to offset the influence of white Senator Gene Green. Although the court below complained of borders changing from one side of the street to the other, we know of no evidence that the State ever went below the census block level in creating these districts. Because a census block is the equivalent of a city block, by necessity the middle of some streets will serve as boundary lines.

of white, not minority, voters.[10]

On this point, we note the Brief of Amici Curiae North Carolina Legislative Black Caucus et al., submitted in *Shaw v. Hunt*, Nos. 94-923, 94-924. It highlights the "simple fact of mathematics that "the more values that 'enter into a legislature's redistricting calculus,' the fewer the possible solutions." *Id.* at 19 (quoting *Miller v. Johnson*). Thus, "[i]ronically, the irregularity of a district's shape may in fact be powerful evidence that racial considerations, while undoubtedly present, did *not* predominate and instead were part of a complex calculus," *id.* at 20.

C. Protection Of Incumbents Is A Legitimate, Non-Racial State Interest

Appellees appear to assert three arguments as to why protection of incumbents should not be considered a legitimate, non-racial influence that explains the odd shapes of Districts 18, 29 and 30. First, they claim that incumbents

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[10]J.A. 335, 341, 342. The maps attached to appellees' brief themselves rebut appellees' description of "integrated" urban areas, of "precise racial cuts corresponding to bizarre shapes" and of tendrils to capture minority population. As to District 30, the maps and data reveal that African Americans are highly concentrated in South Dallas, with 50% of District 30 comprised of a core area that is 69% black. This concentration of black population is shown in the fold-out of PX 34H2, attached to Brief for Appellees. *See also* J.A. 335. The "arms" of District 30 are majority-white. Although in some places the "arms" pick up black population, these parts of the "arms" do not "predominate" in the overall construction of the district, as the overlay map of PX 34H2 makes clear. The portion of District 30 in Collin County (Plano) includes only 1398 blacks, PX 34P, at 16, or 0.02% percent of the district's total population. The partisan shading maps reveal that in going north to pick up population, District 30 was severely constrained by huge concentrations of heavily Republican territory. The fold-out map of TX Ex. 9A(2), when compared with the overlay map of PX 34H2, clearly demonstrates that District 30's "arms" are much more highly correlated with Democratic partisan affiliation than with race.

"influence[d] the district lines at the margins" only. Br. Appellees 31-32. The record and the lower court's findings make clear that, whether "marginal" or otherwise, satisfying the political needs of incumbents and one white aspirant (Gene Green) is what is at issue in this case, since it caused the district lines to be irregular.[11] Plaintiffs' main witness, Rep. Grusendorf, explained that "[t]his plan was drawn with only one thing in mind, and that is to protect Democratic incumbents, period." J.A. 380 (Texas House Floor Debate, Aug. 21, 1991). The court below found that incumbent protection caused the irregularities in Districts 18 and 29 in Houston. TX J.S. 55a-56a (quoted in Lawson-LULAC Br. 4-5).

Second, appellees' footnotes recite the district court's position that incumbent protection is not a legitimate state interest when it is done aggressively and leads to "the representatives [selecting] the people." Br. Appellees 42, n. 35. This argument is contrary to *Miller* and to the principle of federalism, for reasons set out in our opening brief, at 30-33. In essence, this claim is that Texas cannot both intentionally create African-American and Hispanic opportunity districts and protect its incumbents.[12]

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[11]If the influence of incumbents was only "at the margins," then the differences between the final districts, compared to Senator Johnson's and Rep. Martinez' initial proposals and to the ideal districts set out in State Ex. 12 presumably are only marginal.

[12]If one of these goals must be sacrificed, the Court should leave no doubt in its instructions to the court below that it is the white incumbents who must be sacrificed on the altar of compactness. Obligations under the Voting Rights Act take precedence over protecting white incumbents.

Alternatively, appellees may be suggesting, given their endorsement of the double standard, that both goals can be achieved only if the State draws perfectly compact minority opportunity districts, surrounded by bizarre majority-white, incumbent-protection districts, that stretch as far as necessary to find enough Democrats. Such districts appear to raise neither racial gerrymandering nor actionable partisan

Third, appellees adopt the reasoning of the court below that "the state's use of race to accomplish this goal [protecting incumbents] requires ... strict scrutiny." Br. Appellees 41. Appellees do not contradict the undisputed evidence that white Democrats wanted to include minority voters in their districts *because they are Democrats*, not because they are African American or Hispanic.[13] In view of the high correlation between race and partisan affiliation that exists in many places, a rule of law prohibiting mere consciousness of race in constructing districts designed to be predominantly Democratic or Republican would likely invalidate almost all currently existing congressional districts in all States with significant minority populations. Appellees' challenge to 18 majority-white districts and their continued assertion that those districts are subject to strict scrutiny, Br. Appellees 21, n.22, confirms that their test means an open-season on majority-white districts located in the vicinity of any concentration of African-American or Hispanic voters.

Indeed, the result of such a ban on consciousness of race would be particularly harmful to African Americans and Hispanics who affiliate with the Democratic party. The logical way for States to comply with appellees' rule of law would be to put significant numbers of African-American and Hispanic voters into majority-Republican districts. However, according to the record, 97% of Texas' African-American voters and over 70% of the State's Hispanic voters, affiliate with the Democratic party. Appellees' rule of law seeks to submerge minority voters in districts where

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gerrymandering issues.

[13]The record reveals the exaggeration in appellees' claim that District 30 "excludes a significant percentage of the Dallas County black community which was placed in CDs 5 and 24," Br. Appellees 65. District 5 includes 33,589 African Americans from Dallas County, PX 34Q, at 22, while District 24 includes 19,737 African Americans from Dallas County, *id.* at 121, for a total of 53,326, or 2% of all African Americans in Dallas County.

they are in the minority both in partisan and racial affiliation.[14]

Apparently conceding that including minority voters in white Democratic districts does not involve race as a *motive*, appellees reframe the district court's theory as "race ... as a *tool*." Br. Appellees 22 (emphasis added). This slogan apparently is intended to imply that the State used race to identify likely Democratic voters. *See id.* at 41 (referring to race as a proxy without saying a proxy for what).[15] Yet, appellees admit the State had on its districting computers, by precinct, partisan voting patterns in elections that are reliable indicators of partisan affiliation. *Id.* at 12. Thus, the State knew directly where the Democrats were and did not need to use "race as a proxy" for Democrats.[16]

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[14]Appellees appear to assert that the Constitution requires submerging minority voters into Republican-majority districts. Br. Appellees 38 (claiming that Texas' majority-Republican districts are unconstitutionally deprived of a multiracial character). This effort to submerge known Democrats into Republican districts is, of course, consistent with plaintiffs' *partisan* goals. Lawson-LULAC Br. 29.

[15]In a State where 97% of African Americans are Democrats, PX 6E6 (quoted by lower court, TX J.S. 33a), it hardly seems fair to accuse the State of "assum[ing], without evidence," Br. Appellees 41, that African-American voters are likely to be Democrats.

[16]Appellees apparently believe that the State used race to identify likely Democratic voters when districting at the census block level, where partisan voting patterns were not on its computer system. (Such partisan voting data was available to Democrat incumbents from the national party, which had computerized primary sign-in data). The logic of this contention, as it applies to minority opportunity districts, is that the State used census block racial data to put *white voters into minority districts*, and *minority voters into white districts*. This is precisely the opposite of the contention made elsewhere by appellees that the State was intentionally splitting VTDs to bring *minority voters into the minority districts*. Using race as a "tool" to identify Democrats works only if the VTD is being split between a Republican and a Democratic district, which is not the

II. DISTRICTS 18, 29 AND 30 SATISFY STRICT SCRUTINY

A. The "Strong Basis In Evidence" Standard Applies

Extensive, largely undisputed evidence in the record establishes that the State and the defendant-intervenors *proved* all three *Gingles* preconditions. Nonetheless, it is important to note that the State's burden in defending a race-conscious remedial action from *constitutional* challenge is to show that it had "a strong basis in evidence of the harm being remedied." *Miller*, 115 S. Ct. at 2491.

Appellees argue that strict scrutiny requires "the State to be 'right' and not just reasonable." Br. Appellees 46. The "strong basis in evidence" standard has been consistently applied to race-conscious affirmative action. Lawson-LULAC Br. 45-46. There is no reason to depart from normal strict scrutiny analysis and to require a heightened level of certainty for state or local governments voluntarily seeking to comply with § 2 of the Voting Rights Act or to remedy racially polarized voting that results from a history of official discrimination.

For the same reasons, states must be permitted to rely on precedents that existed at the time districting decisions were made regarding the legal standards. Where no clear precedent exists, states must have some latitude to reach reasonable interpretations of the law.[17] To require

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case in drawing district line between white Democratic districts and minority opportunity districts, also majority-Democrat. If the State used race in splitting VTDs between two majority-white districts, such action would not have affected the minority opportunity districts.

[17]The question is not whether a Voting Rights Act plaintiff would have succeeded in a § 2 lawsuit, but whether the State had a compelling reason for race-conscious action. The Voting Rights Act is a remedial statute, enacted and amended as recently as 1982 on the basis of an overwhelming record before Congress that African Americans and other

absolute certainty in predicting how a federal court years later will decide every factual question and every undecided issue of § 2 law would deny governments any way to avoid the "competing hazards" of liability, *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 290-91 (1986) (O'Connor, J., concurring in part and concurring in the judgment).[18] The "strong basis in evidence" standard permits the State a small amount of leeway to resolve uncertainties in favor of the interpretation that fosters compliance with the Voting Rights Act.

B. Texas Had A Strong Basis In Evidence That The *Gingles* Preconditions Existed With Respect To Districts 18, 29 And 30

To avoid duplication, the Lawson-LULAC appellants rely on the briefs of the State and the United States on most issues regarding the application of § 2 to Texas in 1991.[19]

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racial and language minority groups were being denied, on a widespread basis, an equal opportunity to elect their candidates of choice. It follows that voluntary compliance with § 2, to the best of the State's ability, is in itself a compelling interest. The open issues of interpretation of the Voting Rights Act turn not on constitutional law, but on ascertaining the meaning and intent of Congress, *i.e.*, statutory interpretation. For purposes of evaluating a State's decision under the compelling interest standard, it should be sufficient to determine whether the State's interpretation of law was reasonable and not itself unconstitutional.

[18]If the State fails to create minority opportunity districts and a federal court later rules that the *Gingles* preconditions existed, it faces liability to § 2 plaintiffs. If it creates such districts and a federal court later rules that the evidence, while "firm," does not quite conclusively prove the *Gingles* preconditions, then the State faces liability for violating the Constitution.

[19]On narrow tailoring, we also note the Brief of Amici Curiae North Carolina Legislative Black Caucus et al., submitted in *Shaw v. Hunt*, Nos. 94-923, 94-924, at 13-19, setting out numerous examples of state and local jurisdictions which have been permitted by courts to construct non-compact remedial districts for § 2 violations.

We briefly discuss below the State's strong basis in evidence that reasonably compact versions of the minority opportunity districts existed and that voting was racially polarized.

1. *Reasonably compact liability districts.*

Several reasonably compact[20] versions of District 30, which would have permitted African Americans to elect their candidate of choice could have been constructed with South Dallas as the District's anchor. Lawson-LULAC Br. 8-10.[21]

Appellees err in claiming that Houston has become

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[20]Appellees suggest for the first time on appeal that the district set out in TX Ex. 12C is not "compact." *Gingles* requires only that a hypothetical liability district be "reasonably compact," a standard this exhibit clearly meets, particularly in comparison with district shapes used by Texas in the past. *See* J.S. 138 (map of 1980's congressional plan, showing many districts less compact than TX Ex. 12C, such as CDs 4, 5, 6, 14, 26). *See also, Jeffers v. Clinton*, 730 F. Supp 196 (E.D. Ark 1989), *aff'd*, 498 U.S. 1019 (1990)(irregularly shaped districts are reasonably compact when viewed in functional terms, taking into account State's normal districting practices).

[21]Appellees claim that none of the alternative versions of District 30 would meet *Gingles* first precondition because all were less than an absolute majority of black population, including TX Ex. 12C, with 49.7% black population. In a multi-ethnic situation, an absolute majority requirement makes little sense, since the dominant group in voting strength will elect its candidate of choice unless the other two groups coalesce perfectly against it. In contrast, the case cited by appellees, *Hastert v. State Bd. of Elections*, 777 F. Supp. 634 (N.D. Ill. 1991), Br. Appellees 48, involved a minority group only 5% of the population. In any event, the Court has reserved deciding whether an absolute majority is required to meet *Gingles* first precondition, *Gingles*, 478 U.S. at 46 n.12; *Growe v. Emison*, 113 S.Ct. 1075, 1084 n.5 (1993); *Johnson v. De Grandy*, 114 S. Ct. 2647, 2656 (1994), and the State made a reasonable choice to recognize the minority population concentration in Dallas, which all agree is large enough to elect its candidate of choice. *See, e.g. De Grandy*, 114 S. Ct. at 2655 (emphasis added)("the first *Gingles* condition requires ... reasonably compact districts *with a sufficiently large minority population to elect candidates of its choice*").

racially integrated and therefore that single-race, minority opportunity districts were impossible. The record shows no significant integration in the sense that whites, Hispanics and African Americans are living side by side. Instead, what appellees' own maps reveal are several large, distinct, racially segregated neighborhoods.[22] Although African-American and Hispanic neighborhoods cross each other downtown,[23] reasonably compact districts encompassing a functional majority of each group are possible.[24]

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[22]*See* PX 34H9, 34H8, attached to Appellees' Brief.

[23]The maps attached to Appellees' Brief show that the Hispanic population concentration runs in a rough "L" shape north and east of downtown, while the African American population forms a rough "Y" starting from the south.

[24]Lawson-LULAC Br. 6-7 & nn. 12, 13. Contrary to appellees' claim, the United States did not say that is impossible to create simultaneous, "reasonably compact" African-American and Hispanic opportunity districts in Harris County. The United States suggests that it is unclear whether this was possible, indicating only that plaintiffs' expert raised questions about the compactness of the African-American opportunity district in the Owens-Pate plan. Br. United States 10. A comparison of District 18 in the Owens-Pate plan, J.A. 142, with prior districts drawn by the State, *see* J.S. 138 (*e.g.*, prior CDs 4, 5, 6, 14), leads to the firm conclusion that the relevant districts in the Owens-Pate plan are "reasonably compact" under *Gingles*. In any event, as noted by the United States, Texas acted reasonably when faced with the certain knowledge that non-simultaneous majority-black and majority-Hispanic districts were possible.

Appellees assert that citizen voting age population (CVAP) data establish that the *Gingles* threshold could not be met for a Hispanic opportunity district in Harris County. CVAP data was not available when the State redistricted in 1991. Based on the information available, the State had a strong basis for concluding that a district with a super-majority of Hispanic voting age population would permit Hispanic voters the opportunity to elect the candidate of their choice. The fact that District 29 has not yet realized this potential has more to do with the State's accommodation of Senator (now Congressman) Green than it does with the potential voting strength of Hispanic voters in Harris

2. *Racially polarized voting.*

Overwhelming evidence establishes that the State had a "strong basis" for concluding that voting was racially polarized in the areas in which Districts 18, 29 and 30 are located. Before addressing the merits of appellees' new claims on this topic, the Lawson-LULAC appellants strongly object to appellees' citation, at least 18 times, of a 62-page, extra-record document, which was not before the trial court and is not properly before this Court. This document, entitled *Minority Voting Rights Analysis for the Texas House of Representatives 1991 Redistricting Plan*, is an advocacy piece submitted by Texas in an effort to obtain pre-clearance, not of the 1991 congressional plan, but rather of a State House of Representatives plan that was ultimately enjoined by both federal and state courts. *See Terrazas v. Slagle*, 789 F. Supp. 828, 837 (W.D. Tex. 1991). Appellees repeatedly cite factual assertions in the *Minority Analysis* for the truth of the matters asserted. Appellants did not have the opportunity to cross-examine the authors or to present any evidence as to either the credibility or the accuracy of the self-serving statements in this document, because it was not offered in evidence. Appellees' pervasive citation to factual claims in an extra-record document "lodged" with the Court is no different than if they wanted to call witnesses to testify in this Court. The trial has been over for 17 months.[25] Appellees' desperate effort to supplement the

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County.

[25] *See, e.g.*, R. Stern, E. Gressman, S. Shapiro & K. Geller, Supreme Court Practice 555 (7th ed. 1993) ("[S]ome counsel have sought to influence the court's decision in a case by attaching to a brief ... some additional or different evidence that is not part of the certified record, such as an affidavit or an unsworn statement. Such an effort, as well as any argument based thereon in the brief or petition, has consistently been condemned by the Court.").

record with unproven, unreliable material must not be countenanced. The Court should ignore this document and should order appellees to black out all portions of their brief that refer to it.

Appellees' valiant effort, for the first time on appeal, to argue that voting in Texas is not racially polarized, is a mishmash of statewide election data,[26] extra-record citations and hearsay. Appellees' post-trial search for extra-record hearsay conveniently ignores the record in this case, in which their own expert found virtually the same levels of racially polarized voting as did the State's expert witness.[27]

Distortions so pervade appellees' no-polarized-voting argument[28] that it is impossible to address more than a few examples here. A persistent example is appellees' citation of instances in which Hispanic cross-over voting provided the margin of victory for African-American candidates as "overwhelming" "evidence of *Anglo* cross-over voting for minority candidates." Brief for Appellees 5 (emphasis

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[26]For example, appellees rely on statewide election of a few officeholders, such as Attorney General Morales. Brief for Appellees 3. Yet, when focused on the relevant district, the story is totally different. In the 1990 Democratic party primary, Attorney General Morales received only 14% of the white vote in the challenged Hispanic opportunity District (CD 29), while the Hispanic candidate for State Treasurer received 0% of the white vote in District 29 in that primary, TX Ex. 14, App. 2, Table 8. General Morales received 84% of the Hispanic vote in District 29, *id.*, showing that regardless of Morales' success statewide, voting is highly polarized in District 29.

[27]PX 36E, Att. F.

[28]For example, appellees recite a series of elections won by Hispanics and African Americans to the U.S. House of Representatives and the State Legislature, Brief for Appellees, 4, 6, without revealing that *these representatives were elected from majority-non-white districts*.

added).[29]

In Dallas County, appellees rely upon the 1993 *LULAC* decision,[30] which addressed only low profile judicial elections in which straight party voting prevails, and a few local 1995 elections.[31] What was before the Legislature in 1991 was the 100-page exhaustive documentation of racially polarized voting in Dallas by the federal court in *Williams v. City of Dallas*, 734 F. Supp. 1317 (N.D. Tex. 1990), decided on the eve of redistricting.

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[29]Appellees claim that 100% success of African American voters' candidates of choice in majority-minority District 18 is "overwhelming evidence" of *white* cross-over voting, Br. Appellees 5, when, in fact, Dr. Lichtman's comprehensive analysis of relevant elections found that whites voted for black candidates in non-judicial elections only 16% of the time in District 18, TX Ex. 14, App. B, last page of Table 3. (The Tables in TX Ex. 14, Dr. Lichtman's Final Report, are not included in the Joint Appendix, but are in the record that has been deposited with the Clerk).

Appellees' claim that PX 14K, J.A. 137, shows "a significant number of *white* voters supporting black and Hispanic candidates in both primary and general elections," Brief for Appellees 4 (emphasis added), is simply an expanded version of this same distortion. Although PX 14K is so vague as to be of no probative significance, one thing about it is clear: it could not possibly reflect elections in majority-white state Senate or congressional districts involving African American or Hispanic candidates because no African American or Hispanic has ever been elected to the State Senate or the United States Congress from a majority-white Texas district. TX Ex. 17, at 51.

[30]In *LULAC v. Clements*, 999 F.2d 831, 883 (5th Cir. 1993), *cert. denied*, 114 S. Ct. 878 (1994), the Fifth Circuit found that highly polarized voting patterns also corresponded to party affiliation. Even assuming, *arguendo*, that this is the correct standard, Dr. Lichtman's analysis in this case found voting to be highly polarized by race in primary elections, where partisan affiliation obviously cannot be the explanation.

[31]Appellees citations to 1995 newspaper articles give no data on the racial and ethnic composition of the electorate in those elections.

Appellees barely acknowledge this meticulous application of the *Gingles* criteria in a footnote near the end of their brief. Neither their effort to ignore nor their effort to discredit[32] this decision can be successful.

III. PLAINTIFFS DO NOT HAVE STANDING

Appellees have virtually conceded lack of standing in Districts 29 and 30. They make *no* argument that any of the plaintiffs who reside in these two districts has suffered individual, particularized harm. Pauline Orcutt, the sole plaintiff residing in District 30, is not mentioned in appellees' standing argument.[33] Appellees' brief also mentions neither of the two residents of District 29, Al Vera and Barbara Thomas, who testified to extraordinarily positive reactions to Congresswoman Sheila Jackson Lee (CD 18) and Congressman Gene Green (CD 29). *See* Lawson-LULAC Br. 61-62.

Appellees' standing argument boils down to: "Blum, *if no one else*, has suffered a particularized harm." Br. Appellees 28 (emphasis added). Yet, a disappointed candidate has no continuing standing unless he establishes as fact a firm intention to run again. *Golden v. Zwickler*, 394 U.S. 103, 117-118 (1969). Neither Blum's deposition nor his trial testimony reveal any such intention.

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[32]Brief for Appellees at 50 n. 47. Appellees claim that the District Court somehow implemented Prof. Lani Guinier's views, citing for this proposition only a 1995 newspaper article whose author apparently disagrees with the Professor. Nowhere in the lengthy *Williams* opinion is Prof. Guinier mentioned; the District Court clearly followed the Voting Rights Act's guidelines, which are painstakingly applied.

[33]Moreover, appellees' theory of standing is that the plaintiffs have been assigned to a "particular district[t] ... *because of their race*." Br. Appellees 26-27. Yet, appellees' contention on the merits is not that *white* voters, such as Orcutt and Thomas, were assigned to districts because of their race. Under appellees' own version of the facts, they were assigned to districts in spite of their race.

CONCLUSION

The decision of the district court should be reversed, and the complaint should be dismissed.

Respectfully submitted,

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IN THE
Supreme Court of the United States
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UNITED STATES OF AMERICA,
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On Appeal from the United States District Court for the Southern District of Texas

---

BRIEF AMICI CURIAE OF THE DEMOCRATIC NATIONAL COMMITTEE AND THE DEMOCRATIC CONGRESSIONAL CAMPAIGN COMMITTEE SUPPORTING APPELLANTS

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BRIEF AMICI CURIAE OF THE DEMOCRATIC NATIONAL COMMITTEE AND THE DEMOCRATIC CONGRESSIONAL CAMPAIGN COMMITTEE SUPPORTING APPELLANTS

INTEREST OF AMICI

The Democratic National Committee is the national political organization of the Democratic Party.[1] The Democratic Congressional Campaign Committee is the political organization for Democratic Members of the United States House of Representatives and is responsible for assisting Democratic candidates running for election to the House.

These *amici* have a direct interest in the standards that may be established in this case to guide the future creation of congressional districts. In particular, they believe it is important that this Court maintain its traditional understanding that legislative redistricting is a political process that is primarily the responsibility of state legislatures. While the courts have a responsibility to eradicate racial discrimination that violates the Constitution, *amici* are concerned that the Equal Protection Clause should not become a weapon for those who simply disagree with the particular political judgments made by a State's elected representatives. For the reasons stated here, *amici* believe that is precisely what occurred in this case.

STATEMENT OF THE CASE

Amici adopt the statement of the case in the brief of the state appellants.

SUMMARY OF ARGUMENT

1. In a case where a State's districting plan is challenged as a "racial gerrymander" under *Shaw v. Reno*, 113 S. Ct. 2816 (1993), strict scrutiny is justified only if the court finds that the State "subordinated traditional race-neutral districting principles . . . to racial considerations." *Miller v. Johnson*, 115 S. Ct. 2475, 2488 (1995). *Amici* submit that this standard was not met in this case

[1] Letters of consent to the filing of this brief by all parties have been filed with the Clerk.

because the predominant factor that determined the borders of the districts invalidated below was not race but a consistently applied state policy of protecting incumbents.

a. Protection of incumbents is clearly one of the legitimate policies that a State may pursue in the course of creating new legislative districts. The Court has so recognized in the related line of cases dealing with the requirement of equal population. *See Karcher v. Daggett*, 462 U.S. 725, 740 (1983); *White v. Weiser*, 412 U.S. 783, 791 (1973). Moreover, there are a number of good reasons why a State might pursue a policy of protecting its incumbent Members of Congress. Such a policy helps to insure that Representatives will have sufficient experience to perform their jobs, helps to promote stability and diversity in the representation of a State's citizens, and can produce concrete benefits because Congress is organized so that power correlates with seniority.

Texas has long pursued an effective, race-neutral policy of protecting incumbents of both parties. It did so in the 1990s, not only in the design of the districts at issue here but statewide. There is every reason why a court should defer to that quintessentially political choice.

b. Once it is clear that incumbent protection can be an independently valid state policy pursued in districting, the proper outcome in this case is not difficult to discern. As even the district court recognized, the driving force in the creation of Districts 18, 29, and 30 was protection of incumbents, as various Representatives fought fiercely over details that might affect their reelection chances. It is true that voters' race was often "considered" in this process—because there is a strong correlation between race and voting behavior in Texas—but such consideration very often had the effect of *dispersing* minorities through the exclusion of minority areas from the new majority-minority districts. Similar phenomena occurred statewide, as the State created other "non-compact" districts designed to protect incumbents—districts the court below left undisturbed.

To be sure, the State also made the decision that Districts 18, 29, and 30 should be majority-minority. But the district court did not appear to have a problem with that decision itself. After all, Texas had experienced huge growth in minority populations in Houston and Dallas and there was every reason to expect that it would create districts allowing those minority communities to elect Representatives of their choice.

Thus, what the district court held, in effect, was that the State could pursue its policy of incumbent protection by creating non-compact districts, and it could create new majority-minority districts, but it could not do both simultaneously. This was legal error, because it did not amount to a determination that racial considerations predominated over other traditional state policies, including the policy of incumbent protection. It is also an approach that carries with it the danger of exploding any limits on *Shaw*-type claims. There is no apparent basis for saying that it was unconstitutional for Texas to move minority/Democratic areas into "Democratic" districts, while moving nonminority/Republican areas into "Republican" districts only in the course of creating Districts 18, 29, and 30, and not elsewhere. But if such a practice becomes illegal generally, *Shaw* will have become a vehicle for attempting to eradicate not race but politics from redistricting.

2. Even if this Court determines that strict scrutiny does apply here, it should still uphold the Texas districting scheme in its entirety. The creation of majority-minority districts in Houston and Dallas was justified as serving the compelling interest in compliance with Section 2 of the Voting Rights Act. Because that is true, a court should not be permitted to second-guess *how* the State chose to go about creating those districts—*i.e.*, its choice to continue to pursue its policy of incumbent pro-

tection, even if it meant the creation of highly "non-compact" majority-minority districts.

ARGUMENT

The sole claim in this case was that the State of Texas, in establishing its congressional districts, had engaged in unconstitutional "racial gerrymandering" within the meaning of *Shaw v. Reno, supra.* In such a case, as this Court made clear last Term, it was the plaintiffs' burden to show that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Miller v. Johnson*, 115 S. Ct. at 2488. "To make this showing," the appellees were required to "prove that the legislature *subordinated traditional race-neutral districting principles*, including but not limited to compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests, *to racial considerations.*" *Ibid.* (emphasis added). Acting prior to this Court's decision in *Miller*, the district court held that appellees had proved a "racial gerrymander" with respect to three "majority-minority" districts—two in the Houston area and one in the Dallas area.

As *amici* see it, the key issue here is whether the district court properly reached that conclusion based on the fact that the districts are majority-minority and very irregularly shaped—in a case where the evidence showed that such "non-compactness" came about, not as a means of producing majority-minority districts, but as a result of a consistently applied state policy of protecting incumbent Representatives. The district court did not dispute that a State may create majority-minority districts. Nor did it invalidate the other "non-compact" districts created statewide in order to protect incumbents, despite its recognition that these districts were often designed so that heavily minority, Democratic areas are included in "Democratic" districts and excluded from "Republican"

ones. *See* 861 F. Supp. at 1326-28, 1344-45 (noting that this pattern occurred throughout the State). But it held, in effect, that when these phenomena occur simultaneously—when districts are majority-minority and very irregular in shape, and there is evidence that areas with heavy concentrations of minority voters were deliberately included in, and excluded from, those districts for political reasons—the results somehow become unconstitutional "racial gerrymanders."

That is not, and should not be, the law. In such a case, the "predominant factor" guiding the legislature's hand is not race but an entirely legitimate state interest in protecting incumbents. Anyone attacking that state policy in court should be required to meet the much more demanding standards applicable to "*political* gerrymander" claims under *Davis v. Bandemer*, 478 U.S. 109 (1986).[2] Unless this distinction is maintained, the *Shaw/Miller* doctrine will become a mechanism for waging political warfare, and the federal judiciary, in turn, will end up with much of the direct responsibility for redistricting, despite this Court's oft-stated commitment to allowing state legislators to retain the primary role in this process. *See Miller*, 115 S. Ct. at 2488; *Voinovich v. Quilter*, 113 S. Ct. 1149, 1156-57 (1993); *Growe v. Emison*, 113 S. Ct. 1075, 1081 (1993).

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[2] We note that, prior to this case, Republican plaintiffs attempted to prove that the Texas congressional districting plan was a "political gerrymander" under *Davis* v. *Bandemer*, but that claim was rejected. *See Terrazas v. Slagle*, 789 F. Supp. 828, 834-35 (W.D. Tex. 1991) (three-judge court), *aff'd mem. sub nom. Richards v. Terrazas*, 112 S. Ct. 3019 (1992); *Terrazas v. Slagle*, 821 F. Supp. 1162, 1172-75 (W.D. Tex. 1992) (three-judge court).

I. STRICT SCRUTINY IS NOT JUSTIFIED, UNDER THIS COURT'S PRECEDENTS, WHERE THE PRIMARY FACTOR AFFECTING A DISTRICT'S SHAPE IS THE STATE'S COMMITMENT TO PROTECTING THE INTERESTS OF INCUMBENTS.

As we have noted, the district court was only authorized to second-guess the State's district lines to the extent that they reflected a subordination of neutral districting principles to racial considerations. As Justice O'Connor put it in *Miller*, "[t]o invoke strict scrutiny, a plaintiff must show that the State has relied on race in substantial disregard of customary and traditional districting practices." 115 S. Ct. at 2497. It is not enough simply to show that "race [was] considered in the redistricting process." *Ibid.*

This standard, in turn, must be applied with "extreme caution," if courts are to respect the settled rule that " 'reapportionment is primarily the duty and responsibility of the State.' " *Id.* at 2488 (majority opinion) (quoting *Chapman v. Meier*, 420 U.S. 1, 27 (1975)). "Electoral districting is a most difficult subject for legislatures, and so the States must have discretion to exercise the political judgment necessary to balance competing interests." *Ibid.* Legislatures, for example, will "almost always be aware of racial demographics; but it does not follow that race predominates in the redistricting process." *Ibid.*[3] More-

[3] We note that the obligation to accord deference to state legislatures in this area should be seen as continuing even after there is a finding that a particular districting plan is unconstitutional. *See Upham v. Seamon*, 456 U.S. 37, 40-44 (1982) (per curiam); *White v. Weiser*, 412 U.S. at 793-97. Since *Shaw*, the lower courts have shown a troubling tendency to take over the districting process for themselves during this remedial phase. *See, e.g., Johnson v. Miller*, 864 F. Supp. 1354, 1359, 1393 (S.D. Ga. 1994) (three-judge court) (per curiam) (explaining that the district court was planning to "impose" its own redistricting plan for the November 1994 elections and that the State of Georgia would be at liberty "to revisit the issue" of redistricting *after* the elections), *aff'd and remanded*, 115 S. Ct. 2475 (1995); *Hays v. Louisiana*, 862 F. Supp. 119, 124-25

over, the fact that a districting plan may have been politically influenced provides no basis for judicial intervention. It would make no sense for courts to "attempt[] the impossible task of extirpating politics from what are the essentially political processes of the sovereign States." *Gaffney v. Cummings*, 412 U.S. 735, 754 (1973).

The district court, in this instance, simply did not follow these precepts. It failed to accord appropriate deference to the State's legitimate political determination that protection of incumbents would be a major guiding principle in the districting process. Instead, it denigrated incumbency protection as an unseemly part of the pattern of "racial gerrymandering" it thought it had discerned. Moreover, the court's decision to invalidate three of the State's electoral districts ultimately was based on a hodgepodge of criticisms of features of the districting process, none of which, taken separately, is illegitimate.

In our view, it is quite clear that a consistently applied policy of incumbency protection should be treated as a "traditional race-neutral districting principle" worthy of respect by the federal courts. Where, as here, that principle has played a primary role in determining the final shape of districts statewide (while other principles like compactness have been given little weight by the legislature), it makes no sense to single out three districts for special scrutiny simply because they have a majority of minority voters and appear to a court to be particularly irregular in shape."[4] Those facts, by themselves, simply

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(W.D. La. 1994) (three-judge court) (district court appointed a special master and, using a computer program loaded with demographic data, drew its own redistricting plan; district court neither held a remedial hearing nor provided the parties an opportunity to comment), *vacated and remanded sub nom. United States v. Hays*, 115 S. Ct. 2431 (1995).

[4] *Cf. Jeffers v. Clinton*, 730 F. Supp. 196, 207 (E.D. Ark. 1989) (three-judge court) (holding that districts proposed by Section 2 plaintiffs were "sufficiently . . . geographically compact" because they were "not materially stranger in shape than at least some

do not establish the subordination of neutral districting principles to racial considerations.

A. Incumbency Protection Is a Traditional and Constitutionally Legitimate Basis for Drawing Districts.

In *Miller*, this Court listed four examples of the "traditional race-neutral districting principles" that, unlike race, may play primary roles in guiding state districting choices. These were "compactness, contiguity, respect for political subdivisions [and respect for] communities defined by actual shared interests." 115 S. Ct. at 2488. At the same time, this Court expressly acknowledged that this list was not exclusive. *See ibid.* (the list of traditional race-neutral districting principles "includ[es] but [is] not limited to" the four above-listed principles); *see also ibid.* (referring to "these *or other* race-neutral considerations") (emphasis added).

In this case, the State argues that a fifth districting principle worthy of judicial respect is the principle of protecting the reelection prospects of incumbent Members of Congress. This contention is clearly correct. After all, the legitimacy of incumbency protection as a districting criterion has long been accepted by this Court in a related context: the line of cases dealing with the requirement that districts have equal population.[5] This Court has held that minor variance among the populations of districts in the same State may be justified by "consistently applied [nondiscriminatory] legislative policies" such as "making districts compact, respecting municipal boundaries, pre-

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of the districts contained in the present apportionment plan"), *aff'd mem.*, 498 U.S. 1019 (1991).

[5] Some of the equal-population cases cited *infra* dealt with congressional districts and therefore implicated Article I, Section 2 of the Constitution, but the same principles hold true under the Equal Protection Clause of the Fourteenth Amendment. *See Marylanders for Fair Representation, Inc. v. Schaefer*, 849 F. Supp. 1022, 1031 (D. Md. 1994) (three-judge court) (per curiam).

serving the cores of prior districts," *Karcher v. Daggett*, 462 U.S. at 740, "avoiding contests between incumbent Representatives," *ibid.*; *see Burns v. Richardson*, 384 U.S. 73, 89 n.16 (1966), and "maintaining existing relationships between incumbent congressmen and their constituents and preserving the seniority the members of the State's delegation have achieved in the United States House of Representatives," *White v. Weiser*, 412 U.S. at 791.[6] Thus, in the context of justifying deviations from population equality, this Court has considered the protection of incumbents on a par with compactness and respect for political subdivisions. There is no reason to treat this state interest any differently in the context of a *Shaw* claim.

Moreover, there are at least three independent reasons why States are justified in deciding that it makes sense to protect congressional incumbents. First, incumbency protection promotes experience in the legislature. Properly representing a diverse population of more than half a million Americans requires skills and knowledge that are often best acquired on the job. Thus, by protecting its House incumbents, a State may reasonably conclude that it is enhancing the quality of its representation in Congress. *See* Dean Alfange, Jr., *Gerrymandering and the Constitution: Into the Thorns of the Thicket at Last*, 1986 Sup. Ct. Rev. 175, 226-27; Robert G. Dixon, Jr., *Fair Criteria and Procedures for Establishing Legislative Districts*, in *Representation and Redistricting Issues* 7, 17 (Bernard Grofman *et al.* eds., 1982); Daniel H. Lowenstein & Jonathan Steinberg, *The Quest for Legislative Districting in the Public Interest: Elusive or Illusory?*, 33 UCLA L. Rev. 1, 45 (1985).

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[6] *See also Anne Arundel County Republican Cent. Comm. v. State Admin. Bd. of Election Laws*, 781 F. Supp. 394, 397-98 (D. Md. 1991) (three-judge court) (holding that "recognizing incumbent representation, with its attendant seniority, in the House of Representatives" is a "convincing . . . and legitimate justification[]" for deviating from absolute population equality), *aff'd mem.*, 504 U.S. 938 (1992).

Second, bipartisan incumbency protection of the sort at issue in this case promotes stability by preventing small swings in the popular vote from having huge effects on the composition of the State's congressional delegation. Thus, incumbency protection assures Democrats and Republicans alike a substantial presence in the delegation, which in turn makes it more likely that a diversity of voices will continue to represent a given State. *See* Lowenstein & Steinberg, *supra*, at 39-40; Bernard Grofman & Harold A. Scarrow, *Current Issues in Reapportionment*, 4 Law & Pol'y Q. 435, 446 (1982); *see also* David Butler & Bruce Cain, *Congressional Redistricting: Comparative and Theoretical Perspectives* 75-76 (1992) (explaining that incumbency protection enhances the ability of sitting Members to defy national swings and thereby prevents either major party from being decimated by such swings). Although governmental stability, when taken to an extreme, may sometimes squelch innovation, in moderate doses it is, as James Madison explained, "essential to national character and to the advantages annexed to it, as well as to that repose and confidence in the minds of the people, which are among the chief blessings of civil society." The Federalist No. 37, at 226 (Clinton Rossiter ed., 1961).

Third, because the U.S. House of Representatives allocates power among its Members largely according to seniority, it is very reasonable for a State to believe that continued incumbency will provide concrete benefits. *See U.S. Term Limits, Inc. v. Thornton*, 115 S. Ct. 1842, 1912 (1995) (Thomas, J., dissenting) ("[T]he internal rules of Congress put a substantial premium on seniority, with the result that each Member's already plentiful opportunities to distribute benefits to his constituents increase with the length of his tenure."). Although the congressional seniority system has a long pedigree, *see* Woodrow Wilson, *Congressional Government* 102 (1885), state policies favoring incumbency protection in redistricting became particularly crucial in the wake of internal

reforms in the House of Representatives in the early part of this century. In 1910, when Speaker Joseph Cannon wielded his authority arbitrarily and passed over senior Members for assignments, the House revolted, removing committee assignment power from the Speaker. "[S]eniority came to be the most important criterion for committee assignments and chairmanships, and committees rather than parties became the major policy actors." David W. Brady, *After the Big Bang House Battles Focused on Committee Issues*, Pub. Aff. Rep., Mar. 1991, at 32. As two political scientists explained,

> [n]ew members found themselves at the bottom of internal career ladders that they could ascend only through continued service. Although the party and committee reforms of the 1970s multiplied the number of career ladders, long service is still a prerequisite for top leadership posts; even when strict seniority is violated, the choice invariably falls to experienced members. (In 1992, for example, House Democrats removed an ailing eighty-two-year-old chairman in favor of an eighty-three-year-old who ranked second on the committee.)

Roger H. Davidson & Walter J. Oleszek, *Congress and Its Members* 37 (4th ed. 1994). *See generally* Barbara Hinckley, *The Seniority System in Congress* (1971); Nelson W. Polsby, Miriam Gallaher & Barry Spencer Rundquist, *The Growth of the Seniority System in the U.S. House of Representatives*, 63 Am. Pol. Sci. Rev. 787 (1969). The importance of committee chairs under the seniority system was succinctly underscored by the advice that Speaker John McCormack gave to freshmen Members of Congress: "Whenever you pass a committee chairman in the House, you bow from the waist. I do." *Wall Street Journal*, May 3, 1979, at 1, *quoted in* Davidson & Oleszek, *supra*, at 207.

In Texas the policy of protecting congressional incumbents has had a long and fruitful history. The federal facilities and funds that flowed to Texas during Sam

Rayburn's rise to the Speakership of the House are legendary,[7] and the lessons learned from the Rayburn era have never been forgotten in Austin. Following the 1960 census, when population increases mandated the expansion of the Texas delegation from 22 to 23 Members, the state legislature opted to create one statewide at-large district rather than to rearrange existing disricts and threaten the reelection prospects of the 22 incumbents who had already attained considerable seniority. *See* 861 F. Supp. at 1312; *Bush v. Martin*, 251 F. Supp. 484, 489 n.10 (S.D. Tex. 1966) (three-judge court); *Bush v. Martin*, 224 F. Supp. 499, 505 n.7 (S.D. Tex. 1963) (three-judge court), *aff'd per curiam*, 376 U.S. 222 (1964).[8] Protection of incumbents also played a central role in the 1970s and 1980s rounds of redistricting. *See, e.g., White v. Weiser*, 412 U.S. at 791 & n.10; *Seamon v. Upham*, 536 F. Supp. 931, 950-61 (E.D. Tex.) (three-judge court), *vacated on other grounds*, 456 U.S. 37 (1982) (per curiam); *id.* at 994-1027 (Justice, C.J., concurring in part and dissenting in part). By the time of the 1992 elections, Texas' 27 Congressmen had accumulated more than *325 years* of total seniority in the House, and held the chairmanships or ranking memberships of four full committees and eleven subcommittees. *See Congressional Quarterly's Politics in America: 1992, the 102nd Congress* 1409-91 (Phil Duncan ed., 1991). Thus, incumbent protection not only is a "customary and traditional districting practice[]" in Texas, *Miller*, 115 S. Ct. at 2497 (O'Connor, J., concurring), it is one that the State has a substantial interest in pursuing.

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[7] *See generally* Anthony Champagne, *Congressman Sam Rayburn* (1984); D.B. Hardeman & Donald C. Bacon, *Rayburn: A Biography* (1987); Alfred Steinberg, *Sam Rayburn* (1975).

[8] From 1933 to 1965, Texas redrew its congressional map only once (in 1957), and even then it left 12 of its 22 incumbents' districts perfectly intact and made only relatively minor changes in the 10 other incumbents' districts. *See Bush v. Martin*, 224 F. Supp. at 507 & n.14.

Historically, the protection of incumbents in Texas has also been a race-neutral phenomenon. The 1970s round of redistricting protected two incumbents (Congressmen E. "Kika" de la Garza and Henry B. Gonzalez) from majority-Hispanic districts in South Texas and San Antonio (Districts 15 and 20, respectively).[9] The 1980s round of redistricting protected not only those two Mexican-American Congressmen, but also the late Congressman Mickey Leland, an African-American who represented Houston's majority-minority District 18, which had been created in 1971 for a rising star in the Texas State Senate, Barbara Jordan. *See Seamon v. Upham*, 536 F. Supp. at 950-60; *Politics in America: Members of Congress in Washington and At Home* 1487, 1496, 1502 (Alan Ehrenhalt ed., 1983).

In sum, there is no basis in law or policy for failing to accord full respect to a State's decision to give great weight to this factor, as it undertakes the complex process of redistricting. To do otherwise would be to substitute this Court's preferred political perspective for that of a State's elected representatives.

B. Incumbency Protection, Not Race, Was the Predominant Motivating Factor in Determining the Shapes of the Districts Invalidated by the District Court.

Once it is accepted that incumbency protection constitutes a neutral and legitimate districting principle, the proper outcome in this case becomes clear. As even the district court seemingly acknowledged, the State's commitment to protecting incumbents, far from being subordinated to illegitimate racial considerations, effectively "drove" the process in Dallas and Houston, as elsewhere

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[9] Through the accretion of seniority, Congressmen de la Garza and Gonzalez eventually rose to the chairmanships of two powerful House committees—Agriculture and Banking, Finance and Urban Affairs, respectively. *See Congressional Quarterly's Politics in America: 1992, the 102nd Congress, supra*, at 1456-59, 1470-73.

throughout the State. Thus, all 27 incumbents were included in the districting process,[10] and the resulting plan allowed 26 of them to be reelected in 1992. *See Congressional Quarterly's Politics in America: 1994, the 103rd Congress* 1435-530 (Phil Duncan ed., 1993). And the district court itself emphasized the lengths to which the State went in this effort. It noted that "never before have districts been drawn on a block-by-block or neighborhood- or town-splitting level to corral voters perceived as sympathetic to incumbents or to exclude opponents of the incumbents." 861 F. Supp. at 1334. It concluded that the "final result seems not one in which the people select their representatives, but in which the [incumbent] representatives have selected the people." *Ibid.*

The district court, however, effectively side-stepped the impact of its own determination that incumbent protection dominated the districting process. It did so in part by refusing to treat this as a legitimate state policy. It stated that "*Shaw* nowhere refers to incumbent protection as a traditional districting criterion," and that the "State's realization of [this] goal may not fully undo the traditional principles of districting that *Shaw* uses as a benchmark." *Ibid.*

It then sought to erase the distinction between a policy of incumbent protection and the "racial gerrymandering" it thought it had identified. The court acknowledged that incumbent Members of Congress from districts bordering on the new majority-minority Districts 29 and 30 had made intense efforts to retain Democratic voters, but noted that "*many* of the voters being fought over were" minorities. 861 F. Supp. at 1338 (emphasis added).[11]

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[10] The district court observed: "As has historically been the case, Congressional incumbents were actively involved in the redistricting process." 861 F. Supp. at 1317.

[11] Many others, of course, were not. *See, e.g.*, 861 F. Supp. at 1321 (describing struggle over ultimate placement of the majority-white but Democratic community of Grand Prairie in the Dallas

As a result, many African-Americans were both included in, and excluded from, District 30 in Dallas. *See id.* at 1322 ("[I]ncumbent protection in Dallas County involved the allocation of African-American voters among the districts."). From this, the court drew the incomprehensible conclusion that "racial gerrymandering was an essential part of incumbency protection" in the Dallas area, "as African-American voters were deliberately *segregated* on account of their race *among several* Congressional districts." *Id.* at 1339 (emphasis added); *see also id.* at 1341 (in Houston, as in Dallas, "the goal of incumbent protection was itself realized by the deliberate segregation of voters on the basis of race," with "[i]ncumbent Democrats . . . fencing minorities into their districts *or* into the new majority-minority districts, while those same minorities were effectively being removed from Republican incumbents' districts") (emphasis added).

In sum, the court failed to see any distinction between segregation of one racial group into a given district *because of their race*, and consideration of voters' race as one part of a process that (1) was aimed at achieving another legitimate objective (incumbency protection) and (2) led to the distribution of minorities into a variety of districts, as it was deemed necessary to achieve that other objective. This Court in *Miller* emphasized "[t]he distinction between being aware of racial considerations and being motivated by them," [12] noting that the difficulty of

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area); *id.* at 1322 (describing how Congressman John Bryant sought to keep a majority-white East Dallas neighborhood in his District 5, rather than in District 30); *id.* at 1325 ("Senator Green's insistence on including his primarily Anglo 'home' precincts in District 29 had the effect of diluting the Hispanic population percentage of the district."); *id.* at 1346-47 (Hittner, J., specially concurring) (describing how Congresswoman Eddie Bernice Johnson successfully fought to extend her district into the northern part of Dallas County in order to reach Jewish voters).

[12] The *Miller* Court quoted *Personnel Adm'r v. Feeney*, 442 U.S. 256, 279 (1979), where the Court had held that discriminatory

drawing this key distinction "requires courts to exercise extraordinary caution in adjudicating claims that a state has drawn district lines on the basis of race." 115 S. Ct. at 2488; *see United States v. Hays*, 115 S. Ct. 2431, 2436-37 (1995). The ruling of the district court is a clear departure from these principles.

Moreover, if the State's conduct here constituted "racial gerrymandering" it is difficult to see the difference between what occurred in Districts 18, 29 and 30 and district lines drawn elsewhere in Texas (and throughout the country) that had the evident purpose of bringing heavily minority and pro-Democratic areas into certain districts while placing white and Republican areas into others. The district court's own findings, 861 F. Supp. at 1326-28, 1344-45, describe dozens of examples of this phenomenon—examples that are inevitable whenever a State sets out to protect incumbents and there is a strong correlation between race and voting patterns, as there is here. But the district court, quite properly, rejected appellees' challenge to these districts and instead expressly held that they were *not* "the product of racial gerrymandering or intentional racial discrimination." *Id.* at 1309; *see id.* at 1344-45.

To be sure, one possible difference is that the State also wanted District 18 to remain a majority-minority district and decided that two of the new districts (29 and 30) should be majority-minority districts in Houston and Dallas, respectively. But while noting this fact, the district court did not suggest that these decisions were themselves improper. After all, of the roughly 2.75 million increase in Texas' population since the last census, fully *three-fifths* of that increase could be accounted for by

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purpose " 'implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part "because of," not merely "in spite of," its adverse effects.' " 115 S. Ct. at 2488.

growth in the number of Hispanics and African-Americans, primarily in Harris County (Houston), Dallas County (Dallas), Bexar County (San Antonio), and the less urbanized counties of South Texas. *See id.* at 1311-12.[13] Thus, as the district court recognized, it was both "foreseeable" and quite appropriate that the State would place the three new congressional districts in these areas. *Id.* at 1344. Such a choice makes perfect sense in light of another "traditional race-neutral districting principle[]"—the principle of "respect[ing] . . . communities defined by actual shared interests." *Miller*, 115 S. Ct. at 2488. Indeed, the district court pointed out that it was possible to construct majority-minority districts in Houston and Dallas that were far more compact than those ultimately created, 861 F. Supp. at 1342, making clear that the court saw nothing wrong with creating such districts. *See also id.* at 1344 (upholding "designedly Hispanic" District 28 in San Antonio and South Texas).

What seems to have really troubled the district court was not that the State included and excluded racially identifiable areas to protect incumbents, and not that it created majority-minority districts, but that, in doing both of these things, the State also created districts with very irregular shapes. Non-compactness, of course, is not itself illegal,[14] and is not a characteristic unique to these three districts in Texas.[15] But when this characteristic was

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[13] Indeed, the increase in the population of the Hispanic minority *alone* was nearly one-and-a-half times the increase in the population of Texas' Anglo majority. *See ibid.*

[14] In *Shaw*, all nine Justices agreed that compactness is not required by the Constitution. *See Shaw*, 113 S. Ct. at 2827 (citing *Gaffney v. Cummings*, 412 U.S. at 752 n.18); *id.* at 2841 (White, J., joined by Blackmun and Stevens, JJ., dissenting); *id.* at 2849 (Souter, J., dissenting).

[15] Districts 6 and 12, for example, are two districts with white majorities that share a highly irregular border, evidently designed

combined with the majorities of minority voters present in Districts 18, 29, and 30, the result was districts that had the superficial appearance of the kinds of districts condemned in *Shaw* and *Miller*—even though they were the product of a quite different process. What the court ultimately held was that, because of this "appearance" problem, a (perfectly legal) decision to create and preserve majority-minority districts in Dallas and Houston could not co-exist with a (perfectly legal) decision to create non-compact districts whenever reallocation of particular areas with high and low minority populations would serve the broader state policy of protecting incumbents. In *Miller*, this Court held that a "bizarre" shape is not a necessary element of a *Shaw* claim. 115 S. Ct. at 2486-88. In this case the Court should make it equally clear that a showing that a majority-minority district has a very irregular shape is not necessarily a *sufficient* basis for a *Shaw* claim: in some cases, as here, there simply is no causal connection between that shape and the racial composition of the district.

As we have suggested, the problem with the district court's analysis is not just that it is wrong but that it is prone to expansion. Race correlates strongly with voting patterns in many parts of this country. In those places, lines drawn to protect incumbents will often have the appearance and effect of separating heavily minority communities from nearby white communities. Assuming that was illegal here, when undertaken to protect incumbents in the context of creating (otherwise permissible) majority-minority districts, it is difficult to see why it is any less illegal elsewhere. But if that becomes the law, then courts will have gone a long way toward imposing their preferred approach to districting, while prohibiting States from adopting a policy of protecting incumbents.

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to assist incumbent Republican Joe Barton and incumbent Democrat Pete Geren.

In sum, the result below was caused by a basic legal error—the failure of the district court to treat incumbency protection as a fully legitimate districting principle that played the predominant role in the actual process in Texas. Once that error is corrected, the basis for applying strict scrutiny in this case evaporates.

II. EVEN IF STRICT SCRUTINY IS APPLIED, THE DISTRICTS SHOULD PASS CONSTITUTIONAL MUSTER.

Even assuming that this Court decides that strict scrutiny applies, *amici* still believe that the district court's ruling should be reversed. The State had a compelling interest in creating these districts and the particular means selected were narrowly tailored to serve that interest.

First, with respect to the compelling interest, the State had an ample factual basis for determining that the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1971 *et seq.*, required it to maintain a majority-minority district in Houston and to create additional majority-minority districts there and in Dallas. As the district court noted, it was certainly possible to create relatively compact, contiguous majority-minority districts in these locations. That fact, combined with the history of racial bloc voting in Texas and the shortfall between the proportion of minorities in the state population and the number of districts in which they had a reasonable opportunity to elect representatives of their choice, *see Johnson v. DeGrandy*, 114 S. Ct. 2647, 2664 (1994) (O'Connor, J., concurring) ("Lack of proportionality is probative evidence of vote dilution."), made it quite likely that a court would have required the same number of majority-minority districts, in the same basic areas, as those adopted by the State. Certainly, a State has a compelling interest in complying with such a legal requirement. *See Shaw*, 113 S. Ct. at 2830.

As for narrow tailoring, it would be a mistake once again to give any weight to the fact that the particular

districts created were not very compact. Since the Constitution does not require a State to follow this principle in districting, and Texas does not do so as a general matter, the State should be equally free to sacrifice compactness in pursuit of other state policies when it is drawing districts to maintain compliance with the Voting Rights Act. Although the possibility of a "sufficiently . . . geographically compact" district is a prerequisite to a finding of liability under Section 2, *see Thornburg v. Gingles*, 478 U.S. 30, 50 (1986), there is no reason to require the State, in its compliance efforts, to create that particular district. *See Shaw v. Hunt*, 861 F. Supp. 408, 454-55 n.50 (E.D.N.C. 1994) (three-judge court), *prob. juris. noted*, 115 S. Ct. 2639 (1995); *see also* Bernard Grofman & Lisa Handley, *Identifying and Remedying Racial Gerrymandering*, 8 J. L. & Pol. 345, 388-89 (1992). To do so would be to require the State to subordinate its own policies, without in any way promoting greater compliance with federal law. *Cf. White v. Weiser*, 412 U.S. at 793-97. Put differently, there is no reason why Texas could not, in its efforts to create new districts required by the Act, also adhere to its policy of incumbent protection by making those districts more irregular in shape.

CONCLUSION

The judgment below should be reversed.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1995

GEORGE W. BUSH, GOVERNOR OF TEXAS, *et al.*,
Appellants,

v.

AL VERA, *et al.*,
Appellees.

REV. WILLIAM LAWSON, *et al.*,
and
ROBERT REYES, *et al.*,
Appellants,

v.

AL VERA, *et al.*,
Appellees.

UNITED STATES OF AMERICA,
Appellant,

v.

AL VERA, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

BRIEF OF A. J. PATE AS *AMICUS CURIAE* IN SUPPORT OF APPELLEES

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BRIEF OF A. J. PATE AS *AMICUS CURIAE* IN SUPPORT OF APPELLEES

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INTEREST OF THE *AMICUS CURIAE*

Because of the interest of the *amicus curiae* in the preservation of our republican form of government, the *amicus curiae* became very involved in the 1990 cycle of the congressional redistricting process in the State of Texas, testifying before various legislative committees and co-authoring a redistricting plan for the State. This plan received considerable attention during the hearing of *Vera v. Richards* [now this case as *Bush v. Vera*], 861 F. Supp. 1304 (see pp. 1330 and 1342 for favorable comments of the court).

This brief makes points, advances legal theories, and cites authorities which are highly relevant, but very unlikely to be discussed or mentioned by the parties in these cases.

SUMMARY OF ARGUMENT

After surveying thirty years of redistricting decisions by the Court, all essentially gerrymandering cases, the goal of "fair and effective representation" appears as elusive as ever. Now, the Court once more must decide on another variation on the gerrymandering theme.

The contorted rationalizations of appellants' briefs are the equivalent of debating how many gerrymanders can dance on the head of a pin. Incumbent protection is not a legitimate redistricting standard. How can elitist self-interests, the basest of motives, ever rise above the common interests of the people? These districts belong to the people -they do not belong to incumbents, nor any other politicians. (See pp. 5, 12-14, 19, 29, 30, and B.xii, *infra.*)

While the Court in this instant case appropriately should rule in favor of the appellees, that racial gerrymandering under any guise is unconstitutional, a narrow ruling limited to this specific issue would only open up another whole new area for seemingly endless litigation, contentious and divisive. What demagogic schemes and misguided legislation, corrosive to our republican form of government, would be

contrived in reaction to such ruling? What bizarre and limitless mutations of the gerrymander, now unforeseen, would present the Court with future perplexities?

However, the Court has another choice - to cut the Gordian knot restraining fair and effective representation by declaring gerrymandering unconstitutional *per se*. This clear-cut ruling could be augmented by the Court's suggestion of judicially manageable standards, which, if followed, would establish a *prima facie* presumption of constitutionality.

This brief strongly urges the Court to adopt the consistent, logical, and neutral principle offered by the latter choice. Such a decision would be a natural culmination for the Court since thirty years of judicial restraint have only resulted in ever more extreme gerrymanderings. This would not be a new concept for the Court. Justice Stevens, in *Karcher v. Daggett*, 462 U.S. at 745-765, and Justice Powell, in *Davis v. Bandemer*, 478 U.S. at 161-185, make explicit and very persuasive arguments for the unconstitutionality of gerrymandering *per se,* contending that all forms should be judged by the same constitutional standards.

There is ample remedy in the Constitution to ban the gerrymander. Beside the Equal Protection Clause of the Fourteenth Amendment offered by Justices Stevens and Powell, gerrymandering also violates the Due Process Clause through the unfairness of a governmental process and related conflicts of interest; the Guarantee Clause, Article IV, Section 4, by abridging the political power of the people assured by our republican form of government; the First Amendment by abridging freedoms of political speech and association; and Article I, Section 2, by depriving the people of the right to choose fair and effective representation for their common interests.

This decision would restore original intent to the redistricting process by providing fair and effective representation for the people, equally for all groups in their communities of interest. Judicially manageable standards would also provide a principled resolution to most collateral

issues relating to districting and the electoral system (see Appendix B *infra*).

ARGUMENT

I.

Reapportionment of congressional seats is fundamentally a division of political power between the states. In turn, redistricting is a division of political power within the states. Since redistricting is a zero-sum process, to the extent that redistricting is not conducted fairly, some groups or persons must necessarily gain at the expense of others whose voting power has thus been diluted.

Reapportionment is an objective process in the U. S. Congress based on an established formula. By stark contrast, the redistricting process for both state and federal districts, done by the state legislatures in most states, is extremely subjective with virtually no constraints on how the district lines are drawn. In the legislatures, redistricting is a highly partisan process, a spoils system with little or no regard for democratic ideals and consideration of the interests of the people. This corruption of the political system is achieved through gerrymandering, which has been defined by *Black's Law Dictionary,* Sixth Edition (West Publishing Co., 1990), p. 687, as: "A name given to the process of dividing a state or other territory into the authorized civil or political divisions, but with such a geographical arrangement as to accomplish an ulterior or unlawful purpose, as, for instance, to secure a majority for a given political party in districts where the result would be otherwise if they were divided according to obvious natural lines."

Despite the many "apportionment" cases over recent decades, gerrymanderings have only grown apace. In fact, the extreme application of the "one person, one vote" rule has

only provided a convenient cover for gerrymandering.[1] It is instructive to compare the illustrations of gerrymandering provided by Justice Frankfurter in *Coleman v. Green*, 328 U. S. at 560-563 ("fair samples of prevailing gerrymanders" in 1946), to California's redistricting in the 1980 cycle and Texas' redistricting in the 1990 cycle.

Gerrymandering often results in reduced political competition through one-party dominance in elections which are little more than *pro forma* exercises, leading inexorably to declining voter interest and participation, increasing public cynicism, and an alienation of the represented from the representative. Gerrymandering, in a gross mockery of the system, turns the concept of representation on its head; representatives select the people they wish to represent, rather than the people choosing whom they wish to represent them.

Gerrymandering has been called the moral (and functional) equivalent of stuffing the ballot box. The bizarre shapes of districts fragment existing state and local political units and communities of interest at will, disconnecting the people from the process and their representatives. The multi-layered cycles of gerrymandering are self-perpetuating without practical hope of legislative redress.

Gerrymandering trivializes elections by predetermining results for up to ten years before any votes are even cast. It does not allow a coherent and mutable expression of the will of the people, which obviously thwarts the purpose of democracy and representative government.

Our republican form of government is a social contract between the people, who have the ultimate and permanent power, and their representatives, whom the people entrust as temporary custodians of their diverse interests. This contract presupposes that these elected representatives will always

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[1]See Chief Justice Warren's prescient warning in *Reynolds v. Sims*, 377 U. S. at 578-579. Similar concerns have also been expressed by Justice White, *Kirkpatrick v. Preisler*, 394 U. S. at 555; Justice Harlan, *op. cit.* at 551; and Justice Powell, *Davis v. Bandemer*, 478 U.S. at 170-173.

perform their fiduciary responsibilities honorably and in good faith on behalf of the people to serve their best interests.

The interests of the people are never more at risk than when these same representatives, in an intrinsic and direct conflict of interests, must redraw the boundaries of their own districts. This same conflict of interests, though sometimes indirect, applies to congressional districts as well. In these conflicts, the interests of the people always lose. Gerrymandering, in a betrayal of public trust, puts the illegitimate self-interests of the few controlling the process above the legitimate interests of the many, the people. To add insult to injury, the politicians in control of state government use public funds to pay the costs of subverting the redistricting process to their own self-interests, and subsequently use more public funds if necessary to defend their chicanery against its immediate victims. In any other context, such actions would be criminal - using a position of public (or even private) trust and its funds for self-aggrandizement, in terms of wealth or power, or both.

Gerrymandered districts are sometimes excused by the judiciary as justified by "legitimate state interests" or "rational state policies". What legitimate state interests can there be in gerrymandering? The "state" must not be confused with the politicians who may be in control of the state government at a particular time; rather, the state is the embodiment of the people. The only legitimate state interest in redistricting is to provide fair and effective representation for the people and their interests.

When the right to vote is tampered with, it is not only a threat to the legitimacy of the legislative bodies, but to the legislation enacted as well. Such questions of legitimacy could even extend to the Presidency in the event of a President being chosen by a House of Representatives so constituted (and to subsequent judicial appointments), when no majority was obtained in the Electoral College. Thus, gerrymandering could potentially taint the legitimacy of all three branches of the federal government!

II.

The principal engines driving gerrymandering are the powerful interrelated forces of partisan politics and entrenched incumbency, neither more than an ill portent when the Constitution was written.

Law has been described as "the principles of the text, whether Constitution or statute, as generally understood at the enactment".[2] In this light, the nature of the political system and of representation, contemporaneous with the writing of the Constitution, should be briefly examined, providing insight into the conceptual matrix of the men who inspired, framed, approved, and implemented the Constitution.

At the writing of the Constitution, the potential development of political parties was a matter of great concern and a subject of dire warnings. The words "faction" and "party" seem to have been used rather interchangeably in these warnings and apparently referred to some modern combination of political parties and special interest groups.[3] In the course of time, political parties did develop, and special interest groups are now a ubiquitous part of the political scene. The fears and warnings of Madison and Washington have been fully realized, at least to the extent of the anti-republican practice of gerrymandering.

Entrenched incumbency was also considered undesirable, with term limitations often imposed, as evidenced by the Virginia Declaration of Rights (*ibid.*, pp. 311-313), adopted unanimously on June 12, 1776; this document lent wording to the Declaration of Independence and much substance to the Bill of Rights, incorporated as the first ten amendments of the Constitution. Also, see the Articles of Confederation, Article

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[2]Robert H. Bork, *The Tempting of America* (The Free Press, 1990), p. 5.

[3]See Madison, *The Federalist* No. 10, pp. 54-59, and George Washington's Farewell Address, *The Guide to American Law*, Vol. 11 (West Publishing Co., 1985), pp. 375-376.

V, and the Pennsylvania Constitution of 1776 (*ibid.*, pp. 337-344 and 320-331).

In practice, these sentiments were widely held and regarded. "Throughout the entire first century of [Congress'] history, members entered and left Congress with a frequency that stands in sharp contrast with modern standards. During this period, the median term of service in the House of Representatives fluctuated between two and four years, and the proportion of members who served more than four terms never exceeded ten percent."[4]

The basic political unit of representation for the colonies and succeeding states was the county. Additionally, in the colonial and state lower chambers, representation sometimes would be provided variously to sub-units of the county, *i.e.*, towns, cities, parishes, and "places". In the upper chambers, counties were used almost exclusively, either singly or in districts composed of multiple counties. Comparing the state constitutions before the Federal Constitution (most dated from 1776 to 1778) to those next following after adoption of the Constitution in 1788 shows virtually no change in the basic units for representation.[5]

The Ordinance of 1787,[6] commonly called the Northwest Ordinance, enacted by the Continental Congress on July 13, 1787, during the Constitutional Convention, provided for a general assembly; the inhabitants were authorized "to elect representatives from their counties or townships to represent them in the general assembly" (*ibid.*, p. 347).

The Missouri Compromise (*ibid.*, p. 388), by which

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[4]Jack N. Rakove, "The Structure of Politics at the Accession of George Washington", *Beyond Confederation: Origins of the Constitution and American National Identity*, Richard Beeman *et al.* (University of North Carolina Press, 1987), p. 272.

[5]See *The Federal and State Constitutions, Colonial Charters, and Other Laws of the United States*, Ben. Perley Poore, ed. (Government Printing Office, 1878).

[6]*Guide to American Law*, *op. cit.*, pp. 345-350.

Congress admitted Missouri into the Union in March 1821, provided in Section 3 that voters were to "choose representatives to form a convention, who shall be apportioned amongst the several counties", which were then listed with the number of representatives designated for each county. The purpose of the convention was to form a state constitution and government.

The latter two documents are particularly noteworthy because both were enacted by Congress, one under the Articles of Confederation and one under the Constitution, and both prescribed systems of representation for territories based on counties. These were obviously Congress' practical applications (if not models) of its concept of republican government, since both documents also specifically required that the state constitutions and governments to be formed "shall be republican".[7]

Even today, after more than two centuries, the county is still the principal sub-unit of government within the states, and logically there is no reason it should not regain its historic role in the districting process. And not simply because it would be a restoration of original intent, but because, now as then, it is also the wisest way to help ensure fair and effective representation for the people in their communities of interest.

III.

Mason, in Article VI of the Virginia Declaration of Rights, stated that electors and their representatives should have "sufficient evidence of permanent common interest with, and attachment to, the community".[8] In *The Federalist* No. 10, p. 55, Madison wrote in similar words concerning factions

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[7] *Ibid.*, pp. 349 and 389. Also, see Madison, *The Federalist* No. 39, pp. 254-255, and *The Papers of James Madison*, Vol. 8, Robert A. Rutland, ed. (University of Chicago Press, 1973), p. 354.

[8] *Guide to American Law, op. cit.*, p. 312. Also, see Madison, *The Federalist* No. 56, pp. 377 and 380-381, and Hamilton, *The Federalist* No. 71, p. 479.

which are "adverse to the rights of other citizens, or to the permanent and aggregate interests of the community", linking individual rights with community interests.

In a republican form of government, if representation is to have any intrinsic meaning at all, it must be based on organic groupings of socially-cohesive persons with common sets of interests within geographically-definable areas.[9]

The representation of interests in relation to place has been noted by several Justices. Justice Harlan in *Reynolds v. Sims*, 377 U.S. at 623-624, in response to another Justice's comment that "people, not land or trees or pastures, vote", stated: "But it is surely equally obvious, and, in the context of elections, more meaningful[,] to note that people are not ciphers and that legislators can represent their electors only by speaking for their interests - economic, social, political - many of which do reflect the place where the electors live. The Court does not establish, or indeed even attempt to make a case for[,] the proposition that conflicting interests within a State can only be adjusted by disregarding them when voters are grouped for purposes of representation." Justice Stewart, in *Lucas v. Colorado General Assembly*, 377 U. S. at 750, stated: "[L]egislators do not represent faceless numbers. They represent people, or, more accurately, a majority of the voters in their districts - people with identifiable needs and interests which require legislative representation, and which can often be related to the geographical areas in which these people live. The very fact of geographic districting, the constitutional validity of which the Court does not question, carries with it an acceptance of the idea of legislative representation of regional needs and interests." Justice Powell in *Davis v. Bandemer*, 478 U.S. at 176 (part III, section B), discusses at length the adverse impact of districting which lacerates communities of interest.

Providing equal political rights for all communities of

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[9]See Edmund S. Morgan, "Government by Fiction: The Idea of Representation", *The Yale Review*, Spring 1983, pp. 326-328 and 336.

interest is a principled approach to representation: How can it be recognized that group or collective rights are in fact important in the political process, yet allow those rights to be claimed only by certain groups while simultaneously denying the same constitutional protection to others? Justice Black, in *Colegrove v. Green*, 328 U. S. at 571, wrote: "For legislation which must inevitably bring about glaringly unequal representation in the Congress in favor of special classes and groups should be invalidated, 'whether accomplished ingeniously or ingenuously.'" Treating all communities the same under the law puts emphasis on the unifying dynamics within each particular community, as opposed to the emphasis placed on the divisions between communities which is the unfortunate consequence of singling out specific protected groups for favored treatment.

Districting based on communities of interest would result in a more effective political participation (in both broad and partisan aspects), a stable electorate capable of corporate effort, and a sense of rational connection between members of the community, its representatives, and the political system. A study published in May 1986 documented that "Familiarity with congressional candidates is greater the less a community is divided among multiple districts." The study concluded that: "[A] specific contribution [is] made by the preservation of natural communities. ... [T]he effect is real enough ... and large enough that by itself it suggests that preservation of community boundaries merits more attention than the Court has heretofore given it. ... [I]t must now be said that there is some genuine, empirical basis on which to press for greater consideration of natural community boundaries in the redistricting process."[10]

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[10]Richard G. Niemi, Lynda W. Powell, and Patricia L. Bicknell, "The Effect of Community-Congressional Districting Congruity on Knowledge of Congressional Candidates", *Legislative Studies Quarterly*,, May 1986, Vol. XI (University of Iowa), pp. 198-199. Also, see *Karcher v. Daggett*, 462 U.S. at 787 (note 3).

In a resumption of their historical role and significance since colonial days, counties should be the basic political unit for defining communities of interest. In rural areas, a number of affinitive counties may need to be combined to attain appropriate district populations with broad common interests (macro communities of interest), often based on geographic features or agricultural and ranching activities. In urban/suburban areas, counties may need to be subdivided into districts with interests more narrowly focused (micro communities of interest), usually neighborhoods based on race, ethnicity, socio-economic class, or industry.

Voting rights are individual rights, but they can be rendered virtually meaningless if fair and effective representation is not provided for interests collectively held in a community of interest. Indeed, the republican concept of representation by definition considers the electorate not as individuals but as members of groups with common interests participating collectively. In *Lucas v. Colorado General Assembly*, 377 U. S. at 749, Justice Stewart wrote: "Representative government is a process of accomodating group interests through democratic institutional arrangements. ... Appropriate legislative apportionment, therefore, should ideally be designed to insure effective representation ... of the various groups and interests making up the electorate." As Justice Powell wrote in *Davis v. Bandemer*, 478 U.S. at 167: "The concept of 'representation' necessarily applies to groups: groups of voters elect representatives, individual voters do not." (And the obvious might be added: voters are represented collectively, not individually.) This recognition of collective representation only enhances rather than diminishes the value of an individual vote.

Individual voting rights are inextricably linked with collective or group voting rights, "the essential rights of the community",[11] whether in terms of equal weighting or equal

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[11]Hamilton, *The Federalist* No. 60, p. 408.

meaningfulness. The perceived tension between these rights is both artificial and illogical. Of what value is a vote of equal weight if its use is meaningless? Individuals gain political power only through collective action in the political process. Group viability is reliant upon shared or common concerns, interests, and values, *i.e.*, communities of interest.

Justice Powell, in *Karcher v. Daggett*, 462 U.S. at 787, stated: "A legislator cannot represent his constituents properly - nor can voters from a fragmented district exercise the ballot intelligently - when a voting district is nothing more than an artificial unit divorced from, and indeed often in conflict with, the various communities established in the State." And, at 788, concluded: "I do believe ... that the constitutional mandate of 'fair and effective representation' ... proscribes apportionment plans that have the purpose and effect of substantially disenfranchising identifiable groups of voters." [References and footnotes deleted.]

IV.

It is clear that gerrymandering is antithetical to fair and effective representation by the denial of equal representation for the various discrete, insular, and identifiable groups who share common interests within their communities. It is equally clear that gerrymandering should be unconstitutional *per se*.[12] The practice has become so pervasive and imbedded into the political system that it is virtually institutionalized. It is so pernicious to representative government and so corrosive in its effect on the democratic process that it should no longer be tolerated by the judiciary.

There is an irreconcilable conflict of interest between political self-interests and the right of the people to fair and effective representation. The system is institutionally incapable of internal change, and it is virtually impervious to

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[12]Justice Stevens, in *Karcher v. Daggett*, 462 U.S. at 745-765, and Justice Powell, in *Davis v. Bandemer*, 478 U.S. at 161-185, make compelling cases for the unconstitutionality of gerrymandering *per se*.

external change because it is self-perpetuating. Since career politicians are well-versed in the complex machinations of redistricting and, using the people's own money, control the entire process as well, the people are overwhelmingly disadvantaged.[13] The process, at its best, is arcane and disjointed, extending over a number of years.

The Court's restraint and three decades of related decisions have failed to result in the achievement of fair and effective representation.[14] Rather then ameliorating with time and despite the Court's efforts (indeed, some have said in part due to), gerrymandering has only become less subtle and more efficient, aided exponentially by accelerating computer technologies.[15] This progression can be quickly confirmed by comparison of the congressional districts for California in the 1980 cycle to those for Texas in the current cycle.

Why should a cabal of political aristocrats, state and federal legislators, be allowed to pervert with impunity the redistricting process for their own petty self-interests, demonstrating contempt for democratic ideals, republican principles, judicial restraint, and ultimately the rights of the

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[13]In California, one of the few states where voters can attempt direct action through ballot initiatives and referenda, several such efforts have met relentless opposition by politicians. Then even when one effort was successful, the referendum was effectively overturned by a partisan state Supreme Court which allowed the offending legislature to redraw district lines basically the same as those rejected by the people by a vote exceeding 60%. See T. Anthony Quinn, *Carving Up California: A History of Redistricting, 1951-1984* (Rose Institute of State and Local Government, Claremont McKenna College) [unpublished manuscript], pp. 54-130 of the section "All Passion Spent: California's 1981-1984 Reapportionment".

[14]See 781 F. Supp. at 402 (1991).

[15]*E.g.*, the *Congressional District Atlas* for the 1990 redistricting cycle is contained in two volumes, each larger than the single volume for the 1980 cycle. The 1990 district maps for Texas required 177 pages, compared to only 16 for 1980; North Carolina required 54 pages, compared to only 3 for 1980. U.S. Bureau of the Census, *Congressional District Atlas, 103rd Congress of the United States*, Vol. 2, U. S. Government Printing Office (1993).

people? Should the judiciary respect those interests, if at all, above the legitimate common interests of the people?[16]

Regarding the issue of determining representation for the states, Mason, in the constitutional debates, arguing for "some permanent and precise standard as essential to ... fair representation", said: "From the nature of man we may be sure, that those who have power in their hands will not give it up while they can retain it. On the contrary we know they will always when they can rather increase it."[17] Madison, in *The Federalist* No. 51, p. 348, wrote: "But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions." [Emphasis added.]

The Court should now exercise an "auxiliary precaution" by declaring gerrymandering unconstitutional *per se*, thus obliging the state legislatures to control themselves in the redistricting process.

V.

As previously cited, *Black's Law Dictionary* defined gerrymandering as "the process of dividing a state or other territory into the authorized civil or political divisions, but with such a geographical arrangement as to accomplish an ulterior or unlawful purpose". Gerrymandering may be further defined functionally as: "Maldistricting by biased and

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[16]See 781 F. Supp. at 409 and Hamilton, *The Federalist* No. 78, p. 522.

[17]*Notes of Debates in the Federal Convention of 1787 Reported by James Madison* (Ohio University Press, 1966), p. 266.

self-interested persons using an unfair process to debase the political influence or power, whether by intent or effect, of certain discrete, insular, and identifiable groups of voters in choosing representation for their common interests; most commonly used to describe state legislative actions, as defined above, using public funds to finance the process with its results established by state law."

All the major redistricting decisions of the Court have been essentially gerrymandering cases under either definition noted above. These cases shared the common characteristics of involving gerrymanderings which denied fair and effective representation for communities of interest,[18] accomplished through unfair and discriminatory manipulation of the political process.[19] Since the affront to the Constitution is the same and the cause is the same, then the constitutional redress should be the same. This redress should be based on the consistent, logical, and neutral principle that all gerrymanderings are unconstitutional *per se*.

The following provisions in the Constitution assert to the unconstitutionality of gerrymandering: the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment, the Guarantee Clause in Article IV, Section 4, the First Amendment, and Article I, Section 2.

Due Process Clause

Gerrymanderings are the products of an unfair political process which is beyond any reasonable expectation of the

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[18]*Davis v. Bandemer* is an exception. Political parties are not communities of interest; they are neither discrete nor insular nor permanent (nor identifiable except episodically). That this is also the most ineffectual of these cases is perhaps not mere coincidence.

[19]These characterizations are supported by Justice Stevens' (then circuit judge) comments in *Cousins v. City Council of City of Chicago*, 466 F. 2d at 847, specifically regarding the *Baker* and *Gomillion* decisions. At 853, Justice Stevens wrote: "I believe all gerrymandering should be judged by the same constitutional standard."

people to effectively change. This hopelessly irreformable corruption of the redistricting process is a violation of due process, a requirement for procedural fairness. If the process is not legitimate nor fair, then what flows from it is of highly questionable legitimacy or fairness. The Due Process Clause requires the substance of any law to be implemented through fair procedures.

Justice Powell, in *Davis v. Bandemer*, 478 U.S. at 173, wrote that, in testing "redistricting plans against constitutional challenges", "[o]ther relevant considerations include the nature of the legislative procedures by which the apportionment law was adopted ... which bear directly on the fairness of a redistricting plan". He added, at 175: "A court should look first to the legislative process by which the challenged plan was adopted." The text following made it clear that "adopted" included mapmaking.

Equal Protection Clause

Justice Stevens in *Karcher v. Daggett*, 462 U.S. at 745-765, makes a powerful argument for the unconstitutionality of gerrymandering. He bases this opinion on the Equal Protection Clause of the Fourteenth Amendment: "[P]olitical gerrymandering is one species of 'vote dilution' that is proscribed by the Equal Protection Clause." (At 744; also see related note 1.) He further details this assertion in Part I of his opinion (at 745-750). The "guarantee of equality of representation ... is firmly grounded in the Equal Protection Clause of the Fourteenth Amendment." (At 747; also see related note 5.) "The Equal Protection Clause requires every state to govern impartially. When a state adopts rules governing its election machinery or defining electoral boundaries, those rules must serve the interests of the entire community. If they serve no purpose other than to favor one segment - whether racial, ethnic, religious, economic, or political - that may occupy a position of strength at a particular point in time, or to disadvantage a politically weak segment of the community, they violate the constitutional

guarantee of equal protection." (At 748; references omitted.) "There is only one Equal Protection Clause. Since the Clause does not make some groups of citizens more equal than others, its protection against vote dilution cannot be confined to racial groups. As long as it proscribes gerrymandering against such groups, its proscription must provide comparable protection for other cognizable groups of voters as well." (At 749; references omitted.)

Justice Stevens in an earlier opinion, *Mobile v. Borden*, 446 U. S. at 86, had stated that gerrymandering violated the Equal Protection Clause which applied "not merely to gerrymanders directed against racial minorities, but to those aimed at religious, ethnic, economic, and political groups as well. Whatever the proper standard for identifying an unconstitutional gerrymander may be, I have long been persuaded that it must apply equally to all forms of political gerrymandering - not just to racial gerrymandering." Also, in note 7 at 87, he added: "This view is consistent with the Court's Fourteenth Amendment cases in which it has indicated that attacks on apportionment schemes on racial, political, or economic grounds should all be judged by the same constitutional standard."

Justice Powell, in *Davis v. Bandemer*, 478 U.S. at 161-185, also makes a compelling exposition for the unconstitutionality of gerrymandering. In section B of part II at 166-167, he writes: "The Equal Protection Clause guarantees citizens that their State will govern them impartially. In the context of redistricting, that guarantee is of critical importance because the franchise provides most citizens their only voice in the legislative process. Since the contours of a voting district powerfully may affect citizens' ability to exercise influence through their vote, district lines should be determined in accordance with neutral and legitimate criteria. ... The Court's decision in *Reynolds v. Sims* illustrates two concepts that are vitally important in evaluating an equal protection challenge to redistricting. First, the Court recognized that equal protection encompasses

a guarantee of equal *representation*, requiring a State to seek to achieve through redistricting 'fair and effective representation for all citizens.' ... Second, ... the Court plainly recognized that redistricting should be based on a number of neutral criteria, of which districts of equal population was only one." [References omitted.]

Chief Justice Warren, in *Reynolds v. Sims*, 377 U.S. at 565-566, wrote: "[E]very citizen has an inalienable right to full and effective participation in the political processes of his State's legislative bodies. ... Since the achieving of fair and effective representation for all citizens is concededly the basic aim of legislative apportionment, we conclude that the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators. Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race or economic status ..." [References omitted.]

Guarantee Clause

In *The Federalist* No. 39, Madison discussed the republican government formed by the Constitution and guaranteed to the states: "[T]he general form and aspect of the government [must] be strictly republican. ..." (P. 250.) "[W]e may define a republic to be ... a government which derives all its powers directly or indirectly from the great body of the people ... It is *essential* to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it ... It is *sufficient* for such a government that the persons administering it be appointed, either directly or indirectly, by the people; ... otherwise every government in the United States ... would be degraded from the republican character." (P. 251.) "Could any further proof be required of the republican complexion of this system, the most decisive one might be found in its absolute prohibition of titles of nobility

... and in its express guaranty of the republican form to each of the [State governments]." (P. 253.)

Madison, in *The Federalist* No. 43, pp. 290-291, discussing the Guarantee Clause, wrote: "In a confederacy founded on republican principles, and composed of republican members, the superintending government ought clearly to possess authority to defend the system against aristocratic ... innovations. ... [W]here else could the remedy be deposited, than where it is deposited by the Constitution? It may possibly be asked, what need there could be of such a precaution ... But who can say what experiments may be produced by the ambition of enterprising leaders ... ? [I]t may be answered, that if the general government should interpose by virtue of this constitutional authority, it will be, of course, bound to pursue the authority."

If states fail to conform to the republican form by providing fair and effective representation for the people, the Court is "bound to pursue the [constitutional] authority", which is the "express guaranty of the republican form".

The government itself, state and federal, must be derived from the people, and not from a "favored class" of it. The federal government has the right to defend the system against "aristocratic innovations" and "the ambition of enterprising leaders". Gerrymandering is an "aristocratic innovation" in which government is derived from a favored class by their dilution of the political power of the people. Career politicians, ruthless in their ambitious and self-interested pursuit of continued office and accumulation of related perquisites, are the modern-day equivalent of aristocrats.

Justice Frankfurter, in *Baker v. Carr*, 369 U. S. at 297, wrote that the case was "in effect, a Guarantee Clause claim masquerading under a different label." At 301, he adds: "Certainly, 'equal protection' is no more secure a foundation for judicial judgement of the permissibility of varying forms of representative government than is 'Republican Form'. ... This, with respect to apportionment, means an inquiry into the theoretic base of representation in an acceptably

republican state. For a court could not determine the equal-protection issue without in fact first determining the Republican-Form issue, simply because what is reasonable for equal-protection purposes will depend upon what frame of government, basically, is allowed. To divorce 'equal protection' from 'Republican Form' is to talk about half a question." And he states further, at 323: "Manifestly, the Equal Protection Clause supplies no clearer guide for judicial examination of apportionment methods than would the Guarantee Clause itself."

Justice Harlan, in *Reynolds v. Sims*, 377 U.S. at 591, referring to the Court's application of the Fourteenth Amendment, writes that "[I]t can, I think, be shown beyond doubt that state legislative apportionments, as such, are wholly free of constitutional limitations, save such as may be imposed by the Republican Form of Government Clause ..."

Referring to the *Luther v. Borden* opinion (7 How. 1) that held the Guarantee Clause nonjusticiable because it involved "political questions"[20], Judge Bork wrote: "Since then, for no very good reason, the Court has held that it may not enforce the clause under any circumstances."[21] Regarding

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[20]Justice Frankfurter, in *Baker v. Carr*, 369 U. S. at 297, note 30, indicates that *Luther* was a partisan political question. He seems to be limiting political questions to those that are partisan, referring again to "partisan politics" at 302 *(ibid.)*. Also, see his opinion in *Colegrove v. Green*, 328 U. S. at 550-556.

[21]Bork, *The Tempting of America, op. cit.*, pp. 85-86. "Federal courts should be loath to read out of the Constitution as *judicially* nonenforceable a provision that the Founding Fathers considered essential to formulation of a workable federalism." 292 F. Supp. at 985. Justice Douglas wrote, in *Baker v. Carr*, 369 U. S. at 242 (note 2): "The statement in *Luther v. Borden* ... that this guaranty is enforceable only by Congress or the Chief Executive is not maintainable." Also, see Arthur E. Bonfield, "The Guarantee Clause of Article IV, Section 4: A Study in Constitutional Desuetude", *Minnesota Law Review*, Vol. 46, 1962, p. 523; John Hart Ely, *Democracy and Distrust* (Harvard University Press, 1980), pp. 118-125; and 730 F. Supp. at 234-237.

Is it conceivable that *Luther* (1849) and *Dred Scott* (1857) share a common

Baker v. Carr, he wrote: "The most obviously relevant clause of the Constitution was article IV, section 4 ...[; it] was a case in which the guarantee clause should have been applied precisely because a situation in which the majority is systematically prevented from governing [or a minority's impact on governing is systematically diluted] is not what the Founders meant by a republican form of government."[22]

Chief Justice Warren, in *Reynolds v. Sims*, 377 U.S. at 582, states that "[S]ome questions raised under the Guaranty Clause are nonjusticiable, where 'political' in nature and where there is a clear absence of judicially manageable standards." This statement clearly implies that, if there are judicially manageable standards, the Guarantee Clause is operative and questions raised under it are justiciable if not "political" in nature. Judicially manageable standards are available to prevent gerrymandering as a violation of the Guarantee Clause. [See Part VI and Appendix A of this brief, *infra*.] And the term "political" must be defined: The Constitution is intrinsically a "political" document, thus every constitutional issue is ultimately a "political" question. A distinction must be made between "political" and "partisan". As disdained as partisan political parties were at the writing of the Constitution, it would be impossible to construe any

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genesis - an illegitimate motivation to effectively nullify any constitutional provisions which could potentially be used to justify federal intervention into the internal affairs ("political questions") of the states? This was not an unusual context for the Guarantee Clause. During debates on the admission of Missouri to the Union (1818-1821), abolitionists in Congress cited the Guarantee Clause as empowering or obligating Congress to prohibit slavery in Missouri, since "the existence of slavery in any state is ... a departure from republican principles." Bonfield, *op. cit.*, pp. 531-532.

[22]Bork, *The Tempting of America*, *op. cit.*, pp. 85-86. Justice Douglas wrote, in *Baker v. Carr*, 369 U. S. at 242: "[T]he right to vote is inherent in the republican form of government envisaged by Article IV, Section 4 of the Constitution." Also, see 292 F. Supp. at 984-985.

original constitutional protections or standing for them *per se*. Inter-party conflicts are in fact partisan political questions which should be nonjusticiable (thus, *Davis v. Bandemer* was decided on the wrong basis - *i.e.*, that political parties were harmed, not that the people and their interests were not properly represented).

Justice Brennan, in *Baker v. Carr*, 369 U. S. at 222 (note 4), referring to *Luther v. Borden*, concedes: "[T]he Court plainly implied that the political question barrier was no absolute ..." Justice Frankfurter, *ibid.* at 283-284, warns: "The doctrine of political questions, like any other, is not to be applied beyond the limits of its own logic ..."

The motivation for the one person, one vote rulings of the Court is a concept of substantive equality, an equal weight for each vote. Such a principle would derive more support from a democratic system of government than from republican government. The word "democracy" is not in the Constitution and is mentioned only negatively in *The Federalist*. Ironically, in the name of equally-weighted individual votes, politicians were relieved of any constraints on gerrymandering, and the counter-effect has been the diminution of the value and effectiveness of those votes. Basing these cases on the Guarantee Clause would have assured the value of votes through fair and effective representation, achievable in a republic, which would have incorporated substantially equal-weighting of votes as well. Although the one person, one vote rulings, reflecting concern for individual rights, find their roots in democratic theory, the irony is that individual rights have greater protection in a republic. Madison, *in The Federalist* No. 10, p. 59, stated that, as opposed to a republic, in "a pure democracy ... there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual."

<u>First Amendment</u>

Gerrymandering, in discriminating against identifiable groups, violates the First Amendment by abridging their

freedom of speech and associational rights through fragmentation of communities of interest. Gerrymandering denies individual voters their right to affect the political process by joining with others in the same community to elect representatives for their like interests. Since gerrymandering is an act of state government, a violation of strict governmental neutrality, it produces an unconstitutional interference with the political process, manipulated to unfairly favor or disfavor certain political interests. In effect, it promotes some political speech while muting other, and the broad range of local political activities is stifled or thwarted for affected groups. See Justice Harlan's comments in *N.A.A.C.P. v. Alabama*, 357 U. S. at 460-461.

Justice Black in *Williams v. Rhodes*, 393 U. S. at 30, wrote: "[T]he state laws place burdens on two different, although overlapping, kinds of rights - the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms. We have repeatedly held that freedom of association is protected by the First Amendment. And of course this freedom protected against federal encroachment by the First Amendment is entitled to the same protection from infringement by the States." [Notes omitted.]

Justice Douglas, *ibid.* at 38-39, wrote: "[T]he right to vote - a 'fundamental political right' ... is 'preservative of all rights.' The right of expression and assembly may be 'illusory if the right to vote is undermined'. ... The Equal Protection Clause ... [which] bans any 'invidious discrimination' ... protects voting rights and political groups, as well as economic units, racial communities, and other entities. ... Cumbersome election machinery [as created by gerrymandering] can effectively suffocate the right of association, the promotion of political ideas and programs of political action, and the right to vote." [References omitted.]

Article I, Section 2

Article I, Section 2, which states that "[t]he House of Representatives shall be composed of members chosen ... by the People", is violated by a state legislature which in effect chooses the members of Congress and its own members by means of gerrymandering district lines. Gerrymandering deprives the people of the political power and right to constitute their own legislature, to choose fair and effective representation for their communities of interest.

In *Wesberry v. Sanders*, 376 U. S. 1, Article I, Section 2 was the constitutional basis for one person, one vote mandates in drawing lines for congressional districts. However, in the opinion of the Court, written by Justice Black, at 17-18, Article I, Section 2 also had broader relevance: "It is not surprising that our Court has held that this Article gives persons qualified to vote a constitutional right to have their votes counted. Not only can this right to vote not be denied outright, it cannot, consistently with Article I, be destroyed by alteration of ballots, ... or diluted by stuffing of the ballot box ..." [References omitted.] In *Colegrove v. Green*, 328 U. S. at 570-571, Justice Black wrote: "The policy is that which is laid down by all the constitutional provisions regulating the election of members of the House of Representatives, including Article I which guarantees the right to vote and to have that vote effectively counted: All groups, classes, and individuals shall to the extent that it is practically feasible be given equal representation in the House of Representatives, which, in conjunction with the Senate, writes the laws affecting the life, liberty, and property of all the people." (Also, see 781 F. Supp. at 401-410.)

VI.

If gerrymandering is declared unconstitutional *per se*, then two questions follow: (1) Who will be responsible for the redistricting process?; (2) How will gerrymandering be precluded?

To the first question, the Court has consistently and

appropriately held that redistricting is a political process which is the responsibility of the state legislatures under Article I, Section 4 of the Constitution. The unconstitutionality of gerrymandering would not change this responsibility.

The issue is not whether redistricting should be a political process or whether it should be the duty of state legislatures. Rather, the issue is simply that the process must be fair, that it must honor the right of the people to fair and effective representation.

Redistricting is a political process, but it does not have to be, nor should it be, a partisan political process, just as it was a non-partisan process at the creation of our republic. Because of its political impact, the process must be as neutral as possible, protecting the interests of the people. Redistricting should be analogous to reapportionment; reapportionment of representation between the states is a purely neutral process in execution, although it has very substantial political consequences.

The importance of the role of the state legislatures in redistricting has been significantly compromised and diminished over the last several decades. Because of the failure of the legislatures to comply with constitutional standards, deliberately or inadvertently, the judicial system has become heavily involved in the process. Nearly half of the current congressional districts have been impacted by court order, not even including the districting changes forced by the Justice Department under the Voting Rights Act. Additionally, there has been a continuing importunate encroachment by federal representatives in the redistricting process.

This sweeping engagement of the courts heightens the risk of jeopardizing the neutrality of the judiciary, or even of its corruption, perceived or actual, through politicization. There are some disturbing indications that this eventuality may have

already begun.[23] It would be a sad day indeed for this republic if the same public cynicism and distrust of the legislatures should ever be extended to the judiciary. Conversely, a decision by the Court to ban gerrymandering would be widely hailed as a restoration of fairness to the political system, enhancing the Court's public esteem.

The encroachment of federal representatives into the workings of the state legislatures also has disturbing aspects of conflicts of interest. Federal legislators have vested interests in perpetuating gerrymandering as direct beneficiaries, and are often co-conspirators in its planning and implementation as well.[24]

If appropriate neutral standards in the redistricting process were followed, there could be a full and untrammeled resumption of the function by state legislatures, where it belongs, without outside pressures or intervention.

To the second question then, gerrymandering can be precluded by the conscientious adherence of state legislatures to judicially manageable standards, such as the proposed model standards for redistricting in Appendix A *infra*. The Court could stipulate that the preparation of redistricting plans in compliance with the proposed (or substantially similar)

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[23]See *Baker v. Carr*, 369 U. S. at 324-325, note 148; Quinn, *op. cit.*, pp. 62-79, 106-113, and 123-126 of the section "All Passion Spent: California's 1981-1984 Reapportionment"; *Badham v. Eu*, 488 U. S. 1024, Appellants' Brief to the U. S. Supreme Court, No. 87-1818 (May 4, 1988), note 1, pp. 3-4; Gordon E. Baker, "Lessons from the 1973 California Masters' Plan", *Political Gerrymandering and the Courts*, Bernard Grofman, ed. (Agathon Press, 1990), pp. 308-309; Bernard Grofman, "Would Vince Lombardi Have Been Right If He Had Said: 'When It Comes to Redistricting, Race Isn't Everything, It's the *Only* Thing'?", *Cardozo Law Review*, April 1993, Vol. 14, at 1253-1254 (with related notes); and footnote 13 *supra*.

[24]See Quinn, *op. cit.* (particularly, the section "All Passion Spent: California's 1981-1984 Reapportionment"). Also, see 781 F. Supp. at 408-409.

redistricting standards would establish a strong *prima facie* presumption that the plans provided fair and effective representation for the people as required by the Constitution. A substantial burden of proof would be required for plaintiffs to overcome this presumption.

The proposed standards *infra* do not comprise an abstruse political theorem or quixotic ideal divorced from reality, but are field-tested - practical and proven with real-world applications. In the 1970 and 1990 census cycles, due to fortuitous stalemates caused by split control of the state government in California, the state Supreme Court appointed special masters to draw the district lines. Both plans, using near-identical criteria, were based on communities of interest.[25] California has the largest population of any state in the Union, is the third largest in size, and is the most geographically, demographically, and economically diverse, with the most pluralistic society. If these judicially manageable standards can make it there, they can make it anywhere.

The proposed standards also follow closely Justice Stevens' criteria, both procedural and delineational, as discussed throughout his opinion in *Karcher v. Daggett*, 462 U. S. at 744-765. For example, the proposed procedural standards are elaborations of the broad procedural criteria suggested by Justice Stevens (at 759): neutral decision makers, use of neutral criteria, opportunity for input of outside viewpoints, and explanation of guidelines. Justice Powell, in *Davis v. Bandemer*, 478 U.S. at 164-178, restates the same delineation criteria noted by Justice Stevens in *Karcher*.

With judicially manageable standards, redistricting plans,

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[25]See *Legislature of State of California v. Reinecke*, 110 Cal. Rptr. 718, and *Wilson v. Eu*, 4 Cal. Rptr. 2d 379. Also, see Quinn, *op. cit.*, pp. 58-75 of the section "Endless Stalemate: California's 1971-1973 Reapportionment". For a recent evaluation of the 1973 plan, see Baker, "Lessons ...", *op. cit.*, p. 296. For a judicial review of the 1992 plan, see *DeWitt v. Wilson*, 856 F. Supp. 1409.

in effect, would be self-evaluated. Currently, judicial reviews are uncertain and always after the fact when plans are challenged in the courts. The damage has already been done to fair and effective representation and democratic institutions for years, often nearly through the decade. As has been said, justice delayed is justice denied.

Gordon E. Baker wrote: "Tortuously shaped districts ... have become the hallmark of gerrymandering because they offend the sense of fair play and the desire for representing some approximation of communities of interest. ... [T]he political branches [could] correct inequities for judicial review, following general guidelines laid down by the Court- for example, proper procedures (public hearings, broad consultation, official justifications of districting plans), adhering to local subdivision boundaries whenever practicable, following traditional (and, often, state constitutional) criteria designed to protect the integrity of geographic regions and communities. ... Those who would leave the problem to the give-and-take of the political process overlook the fact that the process itself often resembles a monopoly more than a free market ... A generation ago the problem of malapportionment in the form of vast population disparities among districts was virtually immune from political remedies for much the same reasons. Until the remaining form of vote dilution is also checked by the judiciary, the reapportionment revolution will remain unfinished."[26] [Emphasis added.]

Following neutral standards of redistricting for fair and effective representation that apply equally to all groups would provide a principled resolution to most collateral issues relating to districting and the electoral system. See Appendix B *infra*. A decision to declare gerrymandering unconstitutional *per se* would not be a reversal of previous "apportionment" and related voting rights decisions - it would

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[26]Baker, "The Unfinished Reapportionment Revolution", *op. cit.*, pp. 24-25.

transcend them as a fulfillment of their promise and hope of fair and effective representation for the people.

VII.

Chief Justice Warren, in *Reynolds v. Sims*, 377 U. S. at 565-566, captured the essence of this issue with his statement that "fair and effective representation for all citizens is concededly the basic aim of legislative apportionment".[27] This ideal of democratic representation could be realized through the Court's declaration that gerrymandering is unconstitutional *per se*, providing judicially manageable standards, which, if followed, would establish a *prima facie* presumption of constitutionality. This straightforward finding would resolve not only the contentious matter of gerrymandering, but would also resolve or mitigate several related issues, as discussed in Appendix B *infra*.

The first three words of the Constitution, **WE THE PEOPLE**, were not writ large without purpose or reason - they were a graphic expression of the pre-eminence of the people in the republic being founded. It is not possible to overestimate the depth of these feelings.[28] Lincoln, in his immortal Gettysburg Address, said that our republic was a "government of the people, by the people, for the people".

It is evident that the people are the supreme authority in our political system and that their common interests take precedence over all others, with no deference given to those contrary. Hamilton wrote (*ibid.* No. 59, pp. 400-401) that there is "an obvious distinction between the interest of the people in the public felicity, and the interest of their local rulers in the power and consequence of their offices ... [who are] stimulated by the natural rivalship of power, and by the hopes of personal aggrandizement ... The scheme of separate

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[27]See Grofman, *op. cit.*, at 1262, note 102.

[28]See Madison, *The Federalist* No. 45, p. 307 and Hamilton, *op. cit.*, No. 22, p. 144.

confederacies which will always multiply the chances of ambition, will be a never failing bait to all such influential characters in the State administrations as are capable of preferring their own emolument and advancement to the public weal. ... [The Union's] preservation therefore ought in no case that can be avoided to be committed to the guardianship of any but those whose situation will uniformly beget an immediate interest in the faithful and vigilant performance of the trust."

The diminution, in any manner, of the right to vote strikes at the very heart of republican principles, the constitutional foundation upon which our government is established. The Declaration of Independence stated that "the right of Representation in the Legislature [is] a right inestimable to [the people]". The Court, "bound to pursue [the constitutional] authority", has within its power to restore the right of representation in its full scope to the people, reinvigorating the political process with a renewal of fairness, legitimacy, integrity, and honor.

Democracy, with its sweet winds of freedom, is now sweeping the world, without parallel, such as none would have dared dream only a few years ago. Although relatively young in the family of nations, America has been a lodestar, "the world's best hope",[29] its oldest representative democracy. At a time when the emerging fragile democracies of the world are looking to our political system for hope, guidance, and inspiration, can we do less than what is just and right? "For we must consider that we shall be as a city upon a hill. The eyes of all people are upon us."[30]

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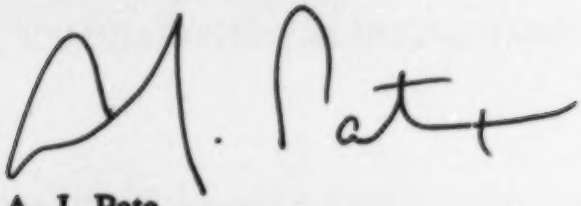
[29]Jefferson's First Inaugural Address, March 4, 1801. *The Writings of Thomas Jefferson*, Saul K. Padover, ed. (The Easton Press, 1967), p. 272.

[30]From a sermon delivered by John Winthrop, first governor of the Massachusetts Bay Colony, in 1630 aboard the *Arbella* enroute to America; Robert C. Winthrop, *Life and Letters of John Winthrop*, Vol. II (Ticknor and Fields, 1867), p. 19. These prophetic words have been fulfilled literally.

Respectfully submitted,



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APPENDIX A

PROPOSED MODEL STANDARDS FOR REDISTRICTING

Procedural Standards

1. The state legislature should appoint a joint redistricting committee, composed of equal numbers of legislators from each major political party to draw the congressional and state legislative districts; a caucus of all legislators from each political part, will select their own party's representatives to the committee. The number of committee members should be the minimum sufficient to adequately perform the task, not exceeding ten members. To the extent practicable, the major geographical areas in the state and major minority groups protected under the Voting Rights Act should be represented on the committee.

2. To avoid potential conflicts of interest, all committee members would be barred, as a condition of service, from seeking office in the first election held in a congressional district drawn by a redistricting committee of which the legislator was a member. For example, members of the redistricting committee which drew a plan in 1991 would be barred from seeking election as a U. S. congressman in 1992, but would be eligible thereafter; they would not be barred from other state elections.

3. Before drawing a preliminary plan, public hearings should be held in major cities in appropriate geographic areas of a state to invite public participation in identifying significant communities of interest. The public should be provided explanations of the delineation standards to be used.

4. The committee should produce preliminary plans following the delineation standards (*infra*), then hold additional public hearings, which may be in a single location

(either in a central city or the state capital), before presenting final plans to the state legislature. These preliminary plans should be made available to the media statewide prior to the public hearings.

5. For both preliminary and final plans, the committee must make adequate and appropriate provision for public dissemination of the rationale or other explanation for all districts, particularly regarding the communities of interest encompassed therein. The complexity of the explanations will generally be in inverse proportion to their fairness, *i.e.*, the simpler, the fairer (*veritas simplex oratio est*).

6. Redistricting plans may be submitted at all hearings by the public or other interested parties for consideration by the committee. These plans must meet the following criteria:

a. must be based on the federal census data;
b. must present a complete plan for the entire state for districts of a type;
c. must follow the delineation standards (*infra*); and
d. must provide full explanation and rationale for all districts drawn, particularly regarding communities of interest encompassed therein.

An exception may be made for informational submissions in which lines are drawn solely to identify boundaries of specific communities of interest, with or without regard to population factors. Such submissions, which may or may not be a complete plan, should be clearly labeled as for identification or information purposes only.

7. Adequate and appropriate public notice should be given prior to all hearings. Testimony not related solely to fairness in determining representation for communities of interest is not germane and will be given no consideration.

8. All official committee meetings should be open to the

public, with complete records (including videotape) kept of all proceedings. Census data, computer programs, and other related materials should be available to the media and the public at cost.

9. No favoritism or preferential treatment, either in receiving public testimony or plans, will be granted to officeholders, at any level of state or federal government, including committee members. All testimony or plans must be judged solely on their intrinsic merits.

10. The final plans prepared by the committee require only a simple majority for committee approval.

11. Although not required, final plans prepared by the committee may be submitted to the state legislature for approval, but amendments should require a three-fourths majority and may be justified only for further unifying of communities of interest. However, such plans, fairly drawn in good faith accordance with these standards (both procedural and delineation standards), should not be subject to veto by a governor.

12. Final plans must be completed by the committee within six months from the date of the release of final federal census data. If legislative approval is required, the legislature has thirty days to act after receipt of the plan from the committee, or the plan will become law automatically.

> [Six months should be more than sufficient. After all, despite the primitive transportation and communications of 1787, the Constitutional Convention took less than four months to complete the Constitution, the greatest political document in history!]

13. If for any reason, the process is not completely finalized

within the required time frame, all data collected by the committee will be submitted to the state supreme court which will appoint masters to complete the process within two months in accordance with the delineation standards (*infra*).

14. In states where the legislature has delegated responsibility for redistricting to extra-legislative bodies, such agencies should comply with these procedural standards (with exception of the first two) and all delineation standards (*infra*).

Delineational Standards

1. Districts must conform to constitutional standards of substantially equal population, based on total population as determined decennially by the Federal Census. Deviations from "ideal district population" may not exceed 5.0%± for congressional districts, nor 10.0%± for state districts. Ideal or average district population is calculated by dividing the total state population by the number of districts of a type to be drawn. The demonstrated purpose of such deviations must be the avoidance of dividing communities of interest or counties.

To optimize the opportunity for racial/ethnic minorities to select representatives of their choice, the districts in which they constitute a majority or have a significant numerical minority may contain total population near the lower limit within the permissible range, thus reducing dilution of their vote and providing some offset for the acknowledged undercount of minorities.

2. Districts should be drawn to achieve fair and effective representation for communities of interest (major groups of people with evident common interests). Communities of interest, although not circumscribable with absolute exactitude, are none the less real. These communities may

be based on social, economic, or geographic interests, such as agricultural areas, regions of industry, racial or ethnic communities, etc.

Districts must be drawn for any racial/ethnic minority comprising a community of interest which is geographically compact and has total population sufficient to constitute a majority in such a district; the same requirement should apply to the optimal extent possible for all other communities of interest as well.

Although their population may be insufficient to constitute even an effective "influence district", every practicable effort should be made to keep intact any discrete and insular communities of interest, which are readily identifiable.

> [*E.g.*, see *United Jewish Organizations v. Carey*, 430 U.S. at 181-182, where the Hasidic Jewish community was unnecessarily split between two districts, because of blind adherence (hooked on a "feeling") to a bureaucratic rule-of-thumb, in a triumph of form over substance at its most absurd.]

3. Districts must be composed of contiguous land masses with reasonable access between inhabited areas; however, non-contiguous land masses, separated by a body of water, may be included in the same congressional district if they are within the borders of the same county. No district line may cross any other district line of the same type. If population is insufficient for a separate district, islands should be incorporated into the same districts that contain the political units of which they are part.

4. Districts must be as functionally compact as practicable in encompassing communities of interest, considering transportation and communication links, as well as natural boundaries.

The measure of compactness is not subject to practical precision. However, the following standard will serve as a reasonable guideline to limit non-compactness: When enclosed within a circle, ellipse, or quadrangle (simple quadrilateral) of the shortest possible perimeter, the area of the district must occupy two-thirds or more of the total area enclosed. Certain exceptions may be made to this general rule, as follows:

a. A lower threshold of five-ninths may be used for districts in which no counties are divided, or for districts in which racial/ethnic minorities constitute a majority of the population.
b. For state border districts enclosed within any of the three geometric figures noted above, the area beyond state borders is not included in the equation.
c. For districts contained wholly within a county, the exception noted in "b" may also be applied to county borders.

5. Counties are the basic defining units in forming districts, and the integrity of their boundaries must be preserved to the fullest extent possible. Generally, counties should be divided between districts only when total population of the county exceeds the maximum allowable deviation from ideal district population.

City boundaries should be preserved to the extent practicable, but with lower priority than county lines, particularly at the margins where they are often irregular and/or sparsely-populated. When census tracts are not conterminous with city boundaries, census tracts control. City boundaries may be disregarded when necessary to avoid dividing compact racial/ethnic communities of interest.

Additional criteria must be followed:

a. In general, when considering existing boundaries of political subdivisions, the older the boundary, the more

weight to be given;

b. Lines from the same district cannot cross a common border between two counties more than twice; and
c. Only one district may cross a common border between two counties, except when a crossing line is also a common boundary between two districts (*i.e.*, two districts or more cannot separately cross the same common border).

6. No census tracts may be divided, except in very rare instances which must be fully explained.

7. All congressional and state districts should share common boundaries to the optimal extent possible, especially where there is mathematical symmetry. Congressional districts should be drawn first, and all else follows from those primary lines. For example, assume 30 congressional districts, 30 state senate districts, and 150 state house districts; the congressional and state senate districts should be identical (conterminous), and each congressional district should be subdivided into 5 state house districts ("nested").

8. Neither partisanship nor incumbency can be a consideration or factor under any circumstance. Since districts should be drawn for communities of interest, no consideration may be given to personal interests of any individual or of any group or special interest which is not discrete and insular.

9. Due to the special protections provided racial and ethnic minorities by the Constitution and current federal law, certain additional factors should be considered in conjunction with those mentioned elsewhere in these standards.

When possible, districts for racial/ethnic communities of interest should have a majority of the voting age population, rather than simply a majority of the total population. After

a majority of voting age population (50 to 55%) has been attained, usually with a 65 to 70% majority of total population, the district should not include additional persons of that minority; this is particularly applicable in multi-district metropolitan areas. However, in multi-county districts, the minority may also be part of broader communities of interest beyond race or ethnicity. For example, total population of a racial/ethnic community of interest may range in excess of 70% where that minority is a part of multiple communities of interest and has a substantial majority of population in a particular geographic region (*e.g.*, the Hispanics in south Texas); however, the creation of such districts must not result in a significant dilution of that minority's potential representation on a statewide basis, either in intent or effect.

When sharing a geographically-compact area and the population of each is insufficient for a majority in a separate district, two or more racial/ethnic communities of interest should be combined to form majority or influence districts if they have political affinity or cohesiveness.

10. These standards are interdependent and interrelated. Any conflicts between standards in their application must always be resolved in favor of the standard which, in a particular situation or circumstance, would provide the fairest treatment for affected communities of interest.

11. Any exceptions to these standards may be justified only as rectification of specific inequities or for further enhancement of communities of interest. A good faith effort to comply with the spirit of these standards is required. Any search for loopholes or seeking advantage through artificial or contrived conflicts between standards will be in bad faith, inimical to the best interests of the people.

[Similar standards used in the fair and effective redistrictings of California in the 1970 and 1990

cycles, under mandate of the California Supreme Court, were "not only reconcilable, but compatible." *DeWitt v. Wilson*, 856 F. Supp. at 1414 (citing 4 Cal. Rptr. 2d at 409).]

APPENDIX B

COLLATERAL ISSUES AND RELATED DECISIONS

Population Equality of Districts

Justice Stevens, in *Karcher v. Daggett*, 462 U.S. at 753, wrote: "The major shortcoming of the numerical standard is its failure to take account of other relevant - indeed, more important - criteria relating to the fairness of group participation in the political process. To that extent, it may indeed be counterproductive." [Emphasis added.] Under the proposed standards *supra*, population equality between the districts becomes only one of a number of standards for fair and effective representation. Since the numerical standard would no longer be the sole criterion, permissible deviations from average district population could be relaxed to a more reasonable standard of substantial equality[31] (a "tolerance for reality"[32]), reconciling the principle of one person, one vote with the constitutional right of fair and effective representation.

The one person, one vote standard which evolved into a virtual zero-deviation requirement has been severely criticized and ridiculed. Much of that commentary has come from Justices on the Court. At the start, Justice Frankfurter, in *Baker v. Carr*, 369 U. S. at 268, warned of a "mathematical quagmire". Chief Justice Warren, in *Reynolds v. Sims*, 377 U. S. at 577, wrote: "Mathematical exactness or precision is hardly a workable constitutional requirement." Justice Harlan, in *Kirkpatrick v. Preisler*, 394 U. S. at 550-552,

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[31]Justice White, in *Kirkpatrick v. Preisler*, 394 U. S. at 553, referring to congressional districts, suggested: "As a rule of thumb, a variation between the largest and smallest district of no more than 10% to 15% [a 'trivial level'] would satisfy me ..."

[32]Justice Fortas, *Kirkpatrick v. Preisler*, 394 U. S. at 538.

wrote: "Marching to the nonexistent 'command of Art. I, § 2' of the Constitution, the Court now transforms a political slogan into a constitutional absolute. Straight indeed is the path of the righteous legislator. Slide rule in hand, he must avoid all thought of county lines, local traditions, politics, history, and economics, so as to achieve the magic formula: one man, one vote. ... [I]nsistence on mathematical perfection does not make sense even on its own terms. ... [T]he Court's exclusive concentration upon arithmetic blinds it to the realities of the political process ... The fact of the matter is that the rule of absolute equality is perfectly compatible with 'gerrymandering' of the worst sort. ... [T]he question before us is whether the Constitution requires that mathematics be a substitute for common sense in the art of statecraft." Justice White, in *Kirkpatrick v. Preisler*, 394 U. S. at 555, wrote: "Today's decisions on the one hand require precise adherence to admittedly inexact census figures, and on the other downgrade a restraint on a far greater potential threat to equality of representation, the gerrymander ... I see little merit in such a confusion of priorities." The Court had strained at a gnat, and swallowed a gerrymander.

Zero population deviation is a *reductio ad absurdum*. There is no perfect census; even the Census Bureau has estimated that the total 1990 Census was undercounted by 2.1%, which was not evenly distributed, geographically or demographically. The census was changing even as it was being taken, through births, deaths, and migrations. Districting plans were not drawn until over a year or more after the census, and the first elections under the new plans were not held until two or more years after the census.

When the 1990 district populations by state were determined, there were very large initial deviations in district size, ranging from Wyoming with 453,588 to Montana with 799,065 (both single district states), a variation of 76%; compared to the ideal district population, based on the national average of 572,466, this is a total variance of 60%.

Populations are not static, so there are dramatic shifts

ongoing throughout the decade, both within and between states. From the 1980 Census to the 1990 Census, the total U. S. population increased by almost 10%, which was not evenly distributed, geographically or demographically (*e.g.*, Nevada increased by 50% and West Virginia decreased by 8%). Individual congressional districts had even larger shifts, ranging from an increase of 86% in California District 37 to a decrease of 23% in Michigan District 13. Even within the same state, Texas had a deviation range of 85%, from a 70% increase in District 26 to a 15% decrease in District 18.

All the above data are based on the count of total population, which is appropriate according to the Fourteenth Amendment, Section 2 ("counting the whole number of persons"). However, if the goal of the Court was an absolutely equally-weighted individual vote,[33] then this was arguably the worst basis to use; more logical bases would have been registered voters, voting age population of citizens only, total voting age population, or total citizens. However, voter equality is an impossible and unattainable goal in a republican form of government. For votes to be truly equal in weight, there would have to be an exactly equal turnout of voters in every district in every election. Of course, this is beyond credibility.

The Court has placed an inordinate reliance on such an illogically simplistic and internally contradictory standard. Zero deviation is certainly a bright line - but from where to where? Shifting sand does not make a good foundation for a constitutional standard. How can such precise law be established on such imprecision?

Justice Powell, in *Davis v. Bandemer*, 478 U. S. at 168, wrote: "A standard that judges the constitutionality of a districting plan solely by reference to the doctrine of 'one person, one vote' may cause two detrimental results. First,

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[33]See generally, Jonathan Willis Still, "Voter Equality in Electoral Systems" (unpublished Ph. D. dissertation, Department of Political Science, Yale University, May 1977), especially pp. 113-131.

as a perceived way to avoid litigation, legislative bodies may place undue emphasis on mathematical exactitude, subordinating or ignoring entirely other criteria that bear directly on the fairness of redistricting. Second, as this case illustrates, and as *Reynolds v. Sims* anticipated, exclusive or primary reliance on 'one person, one vote' can betray the constitutional promise of fair and effective representation by enabling a legislature to engage intentionally in clearly discriminatory gerrymandering." [Notes and references omitted.] The warnings of Justice Powell and others have unfortunately been fully realized; extreme adherence to zero deviation has led inexorably to extreme gerrymandering (*summum ius summa iniuria*).

Although Justices have indicated in several decisions that wider variances may be acceptable in conjunction with other neutral criteria,[34] these open invitations have been disdainfully ignored by the legislatures because they delight in exploiting the zero deviation rule which allows them to put a glossy (though very thin) constitutional veneer of legitimacy over their dirty little game of gerrymandering. To avoid reversals, the lower courts have also accepted the status quo, largely due to the failure of the Court to give any direction by laying down appropriate guidelines.

Partisan Gerrymandering / Proportional Representation

In *Davis v. Bandemer*, 478 U. S. 2797, the Court held that "political" (*i.e.*, partisan) gerrymandering[35] under certain

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[34] *E. g.*, 377 U. S. at 578-581 and 462 U. S. at 780-782, 848, and 852. Even Justice Brennan, the most rigid advocate of zero deviation ("precise mathematical equality"), suggested some exceptions in *Karcher v. Daggett*, 462 U. S. at 740 (also see note 6 at 734).

[35] "Political" gerrymandering is a redundant term. All gerrymandering is political, falling into two basic categories - racial/ethnic and partisan. Each has sub-categories: racial/ethnic gerrymandering may be affirmative

conditions may violate the Equal Protection Clause of the Fourteenth Amendment.[36] This decision, virtually self-nullifying, has had absolutely no impact on gerrymandering, which has only grown more extreme in the 1990 cycle. In the seven years following this decision, the Court has not decided a single case under its precedent.

Partisan gerrymandering would no longer be a distinguishable issue, if gerrymandering is declared unconstitutional *per se* and the Court obliges state legislatures to provide fair and effective representation through use of neutral standards. Gerrymandering is not unconstitutional because of the uncertain harm it does to political parties, but because of the real and immediate harm done to the people and their communities of interest. The identification of gerrymanders *per se* is relatively easy and immediate when based on objective standards (such as the proposed standards *supra*), while the identification of "unconstitutional" partisan gerrymanders is very complex and prolonged using highly subjective and ill-defined standards.

Justice O'Connor, in *Davis v. Bandemer*, 478 U. S. at 144, clearly and correctly identified the issue: "I would hold that the partisan gerrymandering claims of major political parties raise a nonjusticiable political question ..." [Emphasis added.] It is historically evident that political parties as such were intended no provision in the Constitution - it is the interests of the people which are always paramount. *Davis v. Bandemer* focused on cause and intent, which without question were motivated by partisan interests, but identified the wrong effect. The constitutional violation was the

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or negative, and partisan gerrymandering may be unilateral or bilateral. Often racial/ethnic gerrymandering, in either sub-category, may have partisan overtones as well.

[36]This decision in effect says that political parties have constitutional protections that the people in their communities of interest do not have - which cannot be what the Framers of the Constitution intended.

arbitrary fragmentation of communities of interest, for whatever reason, thereby diluting their votes and depriving them of fair and effective representation. This effect was determinable on the face of the map without need for a results test based on several subsequent elections as required to "prove" a partisan gerrymander.

The results test for partisan (and racial/ethnic as well) gerrymandering raises serious apprehensions of an eventual evolvement to proportional representation. Justice O'Connor (*ibid.*, at 145) warned: "It is predictable that the courts will respond by moving away from the nebulous standard a plurality of the Court fashions today and toward some form of proportional representation for all political groups. The consequences of this shift will be as immense as they are unfortunate. ... [I do not] believe that the proportional representation towards which the Court's expansion of equal protection doctrine will lead is consistent with our history, our traditions, or our political institutions."

The use of neutral, primarily qualitative, districting standards will preclude proportional representation because there would be no results test, prospectively or retroactively. The districts simply would be drawn as fairly as possible in a neutral process, optimizing representation or political influence for as many discrete, insular, and identifiable groups as feasible; then the people would be free to choose whom they will to represent their common interests.

As Justice O'Connor (*ibid.*, at 147) wrote: "[N]o group right to an equal [or proportionate] share of political power was ever intended by the Framers of the Fourteenth Amendment." But what is granted by the Constitution is the right of the people, from whom the "government derives all its power", to fair and effective representation for "the permanent and aggregate interests of the community". The right guaranteed is not based on the results of elections, rather it is based on the procedural fairness of the process which determines the value and effectiveness of the vote and the legitimacy of the representation so chosen.

By declaring gerrymandering unconsitutional *per se* based on neutral standards, the Court will have disengaged itself from the partisan political issues which are obviously inherent in deciding any partisan gerrymandering case. As Justice Frankfurter warned in *Baker v. Carr*, 369 U. S. at 267: "The Court's authority - possessed of neither the purse nor the sword - ultimately rests on sustained public confidence in its moral sanction. Such feeling must be nourished by the Court's complete detachment, in fact and in appearance, from political entanglements and by abstention from injecting itself in the clash of political forces in political settlements."

Creation of Majority and Influence Districts for Racial/Ethnic Minorities

The use of the proposed standards *supra* would obviate most of the voting discrimination complaints of racial/ethnic minorities, which the Voting Rights Act was intended to resolve,[7] with the principal exception of those related to multi-member districts.

In *Thornburg v. Gingles*, 478 U. S. at 50-51, which dealt with multi-member districts but presumably would apply as well to single-member districts,[8] the Court established three "necessary preconditions" for a threshold proof for a racial/ethnic minority that "districts operate to impair [its] ability to elect representatives of their choice": "First, ... must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a ... district[;] ... [s]econd, ... must be able to show that it is politically cohesive[;] ... [t]hird, ... must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it ... usually to defeat the minority's preferred

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[7]See *DeWitt v. Wilson*, 856 F. Supp. at 1413-1415.

[8]See Opinion of the Court by Justice O'Connor, *Shaw v. Reno*, ___ U. S. ___, 113 S.Ct. at 2831.

candidate."

Under the proposed standards, the first precondition of *Thornburg* is the only requirement that would need to be met to warrant a district being drawn for a racial/ethnic community of interest, which is the same neutral requirement for all other communities of interest.[9] It would not be necessary for a minority to have to establish the second and third preconditions. Indeed, the proposed standards also go beyond the bare requirements of the Voting Rights Act by the establishment of influence districts where practicable for racial/ethnic minorities and all other applicable groups.[10]

Racial/ethnic minorities have been used shamelessly as pawns by both political parties for purely partisan reasons. The most common form in past cycles was a negative gerrymander, the fragmentation of racial/ethnic communities of interest to maximize Democratic Party control of districts for the protection of white incumbents. In the current cycle, there has been a new phenomenon, affirmative gerrymandering (the most extreme form of gerrymandering yet seen[11]), which fragments non-minority communities of interest to maximize minority districts. What results is simply an agglomeration of a particular minority, which in no sense could be construed as a community itself, yet which by its creation denies the constitutional right of fair and effective

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[9]See 808 F. Supp. at 475, citing Justice White in *United Jewish Organizations v. Carey*, 430 U. S. at 168. Also, see *DeWitt v. Wilson*, 856 F. Supp. at 1413-1414.

[10]See Grofman, *op. cit.*, at 1259, note 86.

[11]See George F. Will, *Restoration* (The Free Press, 1992), pp. 41-50.

representation to its adjoining communities of interest.[12]

This tactic has been strongly aided and abetted by the Republican Party, principally in the hope of depriving white Democratic incumbents of the minority vote, thus making them more vulnerable to defeat.[13] Under the affirmative version, minorities at least get more direct representation, but at a high cost to the integrity of the political system and to non-minority communities of interest.[14] This cynical manipulation of racial/ethnic minorities, as dehumanized votes ("faceless numbers") to be shifted about at will for personal and/or partisan political purposes,[15] is demeaning both to the minorities and to the very process itself.

Justice Stevens, in *Rogers v. Lodge*, 458 U. S. at 651-652, wrote: "Racial consciousness and racial association are not desirable features of our policial system. We all look forward to the day when race *is* an irrelevant factor in the political process. In my opinion, however, that goal will best be achieved by eliminating the vestiges of discrimination that motivate disadvantaged racial and ethnic groups to vote as

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[12]"[A] district would not be sufficiently compact if it was so spread out that there was no sense of community, that is, if its members and its representatives could not effectively and efficiently stay in touch with each other; or if it was so convoluted that there was no sense of community, that is, if its members and its representatives could not easily tell who actually lived within the district. Also of importance, of course, is the compactness of neighboring districts; obviously, if, because of the configuration of a district, its neighboring districts so lacked compactness that they could not be effectively represented, the *Thornburg* standard of compactness would not be met." 686 F. Supp. at 1466.

[13]See Grofman, *op. cit.*, at p. 1251.

[14]Such extreme actions may also be detrimental to the best interests of the minority; see 899 F. 2d at 1038-1039.

[15]See Justice White, *Shaw v. Reno*, ___ U. S. ___, 113 S. Ct. at 2841-2842, note 10.

identifiable units. Whenever identifiable groups in our society are disadvantaged, they will share common political interests and tend to vote as a 'bloc'. In this respect, racial groups are like other political groups. A permanent constitutional rule that treated them differently would, in my opinion, itself tend to perpetuate race as a feature distinct from all others; a trait that makes persons different in the eyes of the law. Such a rule would delay - rather than advance - the goal advocated by Justice Douglas: 'When racial or religious lines are drawn by the State, the multiracial, multireligious communities that our Constitution seeks to weld together as one become separatist; antagonisms that relate to race or to religion rather than to political issues are generated; communities seek not the best representative but the best racial or religious partisan. Since that system is at war with the democratic ideal it should find no footing here. '*Wright v. Rockefeller*, 376 U. S. 52, 67 ... '" [Emphasis in original.] Also, see 740 F. Supp. at 625-626, part IV.

Fair and effective minority representation determined by a neutral process is an issue which needs to be resolved definitively and decisively. Much mischief and harm in terms of racial/ethnic divisiveness and antagonisms have already been done. But there is potential for even greater mischief to our republican form of government and further ripping of the social fabric if this issue continues to drift irresolutely.

Retrogression of Racial/Ethnic Minority Districts

Under Section 5 of the Voting Rights Act, for certain covered jurisdictions, any proposed electoral changes, including redistricting, must be precleared by specified means. The purpose of such preclearance is to assure that a proposed change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color [or language]".

The Court has developed a retrogression test to measure

the effects of such changes. Justice Stewart, in the Opinion of the Court, *Beer v. United States*, 425 U. S. at 141, wrote: "[T]he purpose of Section 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."

Although neither the statutory language nor the Court so states, this effects test is sometimes construed to be an absolute rule against a decline in potential minority representation[16] (*i.e.*, once a minority-majority district has been created, it can never cease to exist). This fallacy has been used to justify extreme and preposterous gerrymanders.[17] Under the proposed neutral standards *supra*, redistricting for minority interests will meet both the greater constitutional protections of the Fourteenth Amendment and the statutory requirements of the Voting Rights Act.[18] They provide a neutral rationale for the eventuality of a decline in potential minority representation. Minorities may lose their majority status in a district (or geographic area) due to substantial emigration of their members into the majority community or other communities of interest or by the immigration into the district of members

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[16]Concerning the difficulty in making such a determination, see Justice Marshall's comments in *Beer v. United States*, 425 U. S. at 153, note 12.

[17]See the Opinion of the Court by Justice O'Connor, *Shaw v. Reno*, ___ U. S. ___, 113 S. Ct. at 2831. In Title 28 of the Code of Federal Regulations (7-1-92 Edition), Part 51, p. 822, the Procedures for the Administration of Section 5 of the Voting Rights Act include among factors to be considered by the Attorney General the following: Sec. 51.59(f) "The extent to which the plan departs from objective redistricting criteria set by the submitting jurisdiction, ignores other relevant factors such as compactness and contiguity, or displays a configuration that inexplicably disregards available natural or artificial boundaries."

[18]See Justice Marshall's opinion (part I, section B), 425 U. S. at 156-158.

of other communities of interest, often a different minority.

Such declines are a reality. In the decade concluding with the 1990 Census, the four congressional districts which lost the most population were all represented by blacks; of the districts losing 10% population or more during the decade, ten out of fourteen (over 70%) had black representatives.

These migrations may be a democratic trend toward increasing assimilation. The political goal of a pluralistic society should be that particular racial/ethnic interests ultimately become indistinguishable from those interests shared with other members of their community.

Other Issues

The impact of the proposed standards *supra* on two other peripheral issues should be noted - incumbency and competitive districts - although these are partisan political questions, neither of constitutional concern except to the extent by which the political process is unfairly distorted to assure or attempt to assure non-competitive districts or the continued reelection of incumbents.[19] Constitutional issues should be based on principles and standards more enduring than transitory partisan loyalties.

Communities of interest evolve slowly, if at all. The long-term effect of adherence to neutral districting standards would be relatively stable district lines, at least at the core. Future population shifts would generally require adjustments only at the margins, contrasted to the current wildly-polymorphic boundaries from decade to decade. Ironically, though the

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[19]It is ironic that the Court's decisions have had the unintended consequence of establishing a *de facto* safe harbor rule for incumbents (effectively creating a right to tenured office) through unrestricted gerrymandering and an acceptance of incumbency-protection as a justifiable state policy, contrary to the interests of the people, while an outraged electorate is fueling a rapidly growing grass roots effort to limit terms in Congress and other elective offices. See generally Will, *op. cit.*

proposed standards disregard incumbency, this stability should benefit incumbents, at least in terms of residency; it should be a very rare event when two incumbents were paired in the same new district, other than when the total number of districts of a type are being reduced.

The requirement of the proposed standards for the optimal use of conterminous boundaries and nesting of different types of districts should increase upward mobility of politicians and thus competitiveness ("the rivalship of power"[20]). Coherent functionally-compact districts are certainly more capable of becoming competitive than fragmented artificial districts. Elections will be considerably more responsive to broad political shifts within communities of interest.[21] Representation will be enhanced by competition over who will best represent the interests of the community; whether inter-party or intra-party is of no constitutional consequence.

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[20]Hamilton, *The Federalist* No. 84, pp. 579-580. The inference could be drawn that the benefits of conterminous or nested districts were anticipated, based on the assumption that counties would be the basic unit for districting.

[21]See Baker, "Lessons ...", *op. cit.*, pp. 302-305, and Quinn, *op. cit.*, pp. 62-75 of the section "Endless Stalemate: California's 1971-1973 Reapportionment".

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Supreme Court of the United States

October Term, 1995

GEORGE W. BUSH, GOVERNOR OF TEXAS, ET AL.,

Appellants,

v.

AL VERA, ET AL.,

Appellees.

REV. WILLIAM LAWSON, ET AL.,

Appellants,

v.

AL VERA, ET AL.,

Appellees.

UNITED STATES OF AMERICA,

Appellant,

v.

AL VERA, ET AL.,

Appellees.

On Appeal From The United States District Court
For The Southern District Of Texas

BRIEF OF THE INSTITUTE FOR JUSTICE AS AMICUS CURIAE IN SUPPORT OF APPELLEES

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INTEREST OF AMICUS CURIAE

The Institute for Justice is a nonprofit, public interest legal center committed to defending and strengthening essential foundations of a free society: private property rights, individual liberty and the free exchange of ideas. The instant case involves the power of the state to make decisions which depend upon racial classifications.

Although the question in the case before this Court concerns the constitutional legitimacy of race-based congressional districting, the issues presented involve both the legal standards contained in the Voting Rights Act and fundamental questions about American society, its openness to racial change, and the nature of democratic representation.

This brief was prepared with the assistance of Professor Abigail Thernstrom, one of the nation's foremost experts on the history and jurisprudence of the Voting Rights Act.

The Institute for Justice has obtained the consent of the parties to the filing of this brief and letters of consent have been filed with the Clerk.

CONDENSED STATEMENT OF FACTS

The complete statement of facts and the history of this litigation has already been presented by both parties. This brief summary is designed to highlight those facts that we believe are critical to the proper understanding and disposition of the case.

A congressional districting plan adopted by the state of Texas following the 1990 census contained 30 districts, three of which are at issue in this case. One is majority-Hispanic and two are majority black; all three were drawn with the explicit purpose of creating safe minority constituencies, and were thus subsequently successfully challenged as unconstitutional racial gerrymanders – impermissible racial classifications. *Vera v. Richards*, 861 F. Supp. 1304 (S.D. Tex. 1994)

As the district court noted, Texas drew the Congressional boundary lines "with nearly exact knowledge of the racial makeup of every inhabited block . . . [and] repeatedly segregated those populations by race. . . . " *Vera*, 861 F. Supp. at 1309. Nevertheless, the state defended the plan as reasonable, resting on such traditional Texas districting criteria as incumbency protection, race-conscious but not race-driven. In fact, even if viewed as a racial classification, subject to strict scrutiny, the State argued, the districting plan could meet the test; it was narrowly tailored to remedy past discrimination and to further a compelling state interest in complying with the Voting Rights Act. These are the main arguments, rejected by the court below, that Texas now reiterates on appeal.

SUMMARY OF ARGUMENT

We take as our starting point that "racial and ethnic distinctions of any sort are inherently suspect and thus call for the most exacting judicial examination." *Regents of the Univ. of California v. Bakke*, 438 U.S. 265, 290-91 (1978)

(Opinion of Powell, J.). Under this Court's jurisprudence, any use of racial classifications is subject to strict scrutiny and must be narrowly tailored to a compelling governmental purpose. *Shaw v. Reno*, 113 S.Ct. 2816, 2825 (1993); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989); *Adarand Constructors, Inc. v. Pena*, 115 S.Ct. 2097 (1995); *Miller v. Johnson*, 115 S.Ct. 2475 (1995).

The principal compelling governmental purpose asserted by appellants is compliance with the Voting Rights Act. We offer this brief mainly to address the vital and dispositive issue of whether the Voting Rights Act required the drawing of Districts 18, 29, and 30. The Act was designed to ensure access to the ballot and an equal opportunity for electoral representation. It does not require racial or ethnic gerrymandering to promote the proportional representation of minority groups. In fact, such efforts are themselves destructive of our nation's social fabric and contrary to the ideals embodied in our civil rights laws. For all these reasons, racial proportionality as the end to which government action is directed, far from representing a compelling interest, is both misguided and impermissible.

ARGUMENT

I. THE VOTING RIGHTS ACT DOES NOT REQUIRE THAT TEXAS DRAW THREE MAJORITY-MINORITY DISTRICTS. THEREFORE, THE NEED TO COMPLY WITH THE STATUTE DOES NOT CONSTITUTE A COMPELLING STATE INTEREST JUSTIFYING THE RACIAL CLASSIFICATION IN THIS CASE.

Constitutional and statutory questions are intertwined in this case; the two cannot be separated. Appellees argue that the race-conscious districting in which Texas engaged constitutes a racial classification in violation of plaintiffs' equal protection rights. Appellants reply that if Districts 18, 29 and 30 are indeed racial classifications, the state's line-drawing meets the test of strict scrutiny; the districts' contours were drawn to further a compelling state interest in complying with Sections 2 and 5 of the Voting Rights Act.

Two questions are thus before this Court: What does the Fourteenth Amendment allow, and what does the Voting Rights Act demand? If the congressional district lines were drawn on the basis of racial classification, this Court cannot resolve the Fourteenth Amendment question without deciding what the Voting Rights Act requires. Texas has no compelling interest in complying with erroneously interpreted law.

A. Districts 18, 29, and 30 are clearly racial classifications; the segregation of black and Hispanic voters is their point.

"Districts 18, 29, and 30 were all designed with highly irregular boundaries . . . [which] function primarily to include sufficient numbers of the favored minority groups and to exclude the disfavored groups so as to assure election of one of the favored groups' members. If these districts – tortuously constructed block-by-block . . . to satisfy the desired racial goal – are constitutional, then the State could more easily hand each voter a racial identification card and allow him to participate in racially separate elections," the district court concluded. *Vera*, 861 F. Supp. at 1345.

Racially separate elections, indirectly achieved by means of race-driven districting, were the point of the Texas lines. The district court called the elections within these majority-minority districts the equivalent of white primaries. *Id.* The State and other appellants argue that it was not race but the desire to protect incumbents that determined the contours. *See, e.g.*, Brief for the United States at 4-5, 43-44. But, if so, it is odd that, as the district court put it, "racial data were an omnipresent ingredient in the redistricting process." *Vera*, 861 F. Supp. at 1336. The REDAPPL software superimposed block-by-block racial census statistics upon local maps; the system conveyed racial and ethnic data every time a line was drawn. *Id.* at 1309, 1318, 1319, 1336. That was the information on which the mapmakers were primarily focused.

Appellants extend the incumbency protection argument in a novel and telling way. The State was protecting

both actual and *potential* incumbents, they argue. The protected category included not only sitting members of Congress but candidates likely to occupy secure congressional seats if the districting lines were favorably drawn. They call this latter group "functional incumbents," a category that (at the time) included State Sen. Eddie Bernice Johnson. Brief for the State of Texas Brief at 5 n.1. But that point further substantiates appellees' case. For minority members of the state legislature – and only for them – the state was willing to provide precisely the districts in which they wanted to run. Black and Hispanic state legislators had special status; they alone were entitled to designer districts made to order for them. Those districts, fashioned as safe minority seats, were inevitably race-driven; race determined their contours.

Although all three districts were explicitly designed to be safe minority seats, the state argues that the challenged districts are "competitive" – open to white and minority candidacies – and thus not segregated. State of Texas Brief at 38. That is correct if the point is that these are districts in which the population is racially mixed; they contain substantial numbers of whites. But "competitive" they are not, by any sensible definition. Whites are mere "filler people" in such districts, two proponents of racial gerrymanders have acknowledged. Aleinikoff and Issacharoff, *Race and Redistricting: Drawing Constitutional Lines After Shaw v. Reno*, 92 Mich. L. Rev. 588, 630-31 (1993). They are included so as not to waste minority

ballots by excessive "packing."[1] White ballots are expected to carry no significant political weight.

That is, in deliberately-fashioned majority-minority districts in Texas and elsewhere, only the black and Hispanic ballots are meant to count. These are districts reserved for minority candidates. In effect, they have a sign posted on them: no white candidates need apply. Indeed, in 1992 several members of the U.S. House of Representatives chose to retire or move to other districts under pressure from black leaders to let blacks run racially uncontested races in newly created majority-black districts. Lublin, *Gerrymander for Justice? Racial Redistricting and Black and Latino Representation* 48, 90 (unpublished manuscript) (available at Harvard University Archives) (1994). Briefs for appellants repeatedly refer to majority-minority constituencies as black or Hispanic "opportunity districts." *See, e.g.*, Brief for the State of Texas at 25 ("Texas intentionally maintained CD 18 as an African-American opportunity district"). The phrase is Orwellian. These are in fact "results" districts. Their point is to guarantee not opportunity, but outcome.

Thus, there should be no dispute that Districts 18, 29, and 30 constitute racial classifications. Not only because they look bizarre, which they do, but also because the classification of voters by race is precisely their aim. Race has determined their contours. They are intentionally

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[1] Whites in majority-black districts, the authors write, "should not be expected to compete in any genuine sense for electoral representation" in those districts, "lest they undo the preference given to the specified minority group." *Id.* at 631.

race-based – for a goal their proponents believe in: increased black and Hispanic officeholding.

B. These majority-minority districts were not racial classifications demanded by the law. The Voting Rights Act does not require states to maximize black or Hispanic officeholding by means of race-based districting.

Appellants argue that if Districts 18, 29, and 30 are racial classifications, the State's line-drawing meets the test of strict scrutiny; the districts' contours were drawn to further a compelling state interest in complying with Sections 2 and 5 of the Voting Rights Act.

Neither Section 2 nor Section 5 of the Voting Rights Act required the drawing of three majority-minority congressional districts. The State misconstrued the statute. It had a compelling interest in complying with the law, but only as validly interpreted and applied.[2]

1. Section 2 is standard remedial legislation; it creates no entitlement to even one safe black or Hispanic district.

Appellants' briefs all argue that the Voting Rights Act required Texas to draw the challenged districts. They focus particularly on the demands of Section 2. "The State drew Districts 18, 29, and 30 in order to comply with Section 2 of the Voting Rights Act." Brief for the United

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[2] *See Shaw*, at 2830 (states have an interest in complying with laws that are "constitutionally valid as interpreted and applied").

States at 19. A court would most likely have required the same number of majority-minority districts, the *Amicus* Brief for the Democratic National Committee (at 20) declares. But what a court would have demanded had plaintiffs prevailed in a Section 2 suit is, of course, irrelevant. Texas had no obligation to provide a remedy for an unproven wrong. Section 2 is standard remedial legislation. A state that strings together black or Hispanic residential pockets in order to create majority-minority districts "is akin to a manufacturer paying punitive damages to potential purchasers of its product prior to anyone suffering an injury or establishing a defect in the product." Butler, *Affirmative Racial Gerrymandering: Fair Representation for Minorities or a Dangerous Recognition of Group Rights*, 26 Rutgers Law Journal (forthcoming 1995). Before minority voters are entitled to even one safe black or Hispanic constituency, plaintiffs must establish a violation of their statutory right to an electoral process open to minority political aspirations.

A key argument of the United States is thus flatly wrong. Texas, appellants state, had a compelling interest in creating safe minority constituencies if it had a "firm basis" for believing plaintiffs might prevail in a Section 2 suit. Brief for the United States at 14. The assertion has no firm basis in the law. The residential concentration of a minority population, coupled with political cohesion, white bloc voting, and the risk of disproportionately low minority officeholding – assuming, *arguendo*, that these facts had been established in the Texas context – have no bearing on the State's districting obligations.

Undoubtedly, the State drew the challenged districts in part to forestall the possibility of a future Section 2 suit. Litigation is costly and disruptive. Redistricting is a politically complex and laborious process, and to design a plan that is not litigation-proof may be a waste of extensive political effort. That Texas wanted to play it safe – that the State wanted absolutely sure protection against a Section 2 challenge – is understandable, but that desire is not a compelling state interest that justifies a racial classification.

2. Whatever the relevance of Section 2 to the redistricting process, that provision guarantees only equal electoral access, not "racially fair" outcomes.

Appellants misconstrue the statute in a second sense. They erroneously assume that districting schemes that provide for a disproportionately low number of safe minority seats will always be found to violate Section 2, if plaintiffs choose to bring suit subsequent to the enactment of a plan.

The provision, in fact, sets no standard for the proper number of majority-minority constituencies. As amended in 1982, Section 2 demands that redistricting plans (and other electoral arrangements) provide minority voters with an equal opportunity to participate in the political process and to elect representatives of their choice.

That language was lifted directly from two pre-1982 constitutional decisions. In *Whitcomb v. Chavis*, 403 U.S. 124 (1971) and *White v. Regester*, 403 U.S. 124 (1973), this Court had directed trial courts to assess the electoral

environment – the setting in which the voting took place. Judges had thus been asked to distinguish the failure of minority voters to elect candidates of their choice for reasons of race from normal electoral defeat – that to which every group, however defined, was vulnerable. It had been a very tall order. What were the criteria that distinguished the one setting from the other?

It was not clear and it could not be. Unequal electoral opportunity was an elusive concept, as Justice Frankfurter observed in 1962. *Baker v. Carr*, 369 U.S. 186 (1962) (Frankfurter, J.,dissenting). Nevertheless, if Section 2 asked courts to measure an inadequately defined phenomenon – electoral inequality – it did not leave judges entirely clueless. Some guidance was provided. This Court in *Whitcomb* unequivocally rejected the view of the trial court, 305 F. Supp. 1364 (S.D. Ind. 1969), that a showing of disproportionately low minority officeholding and evidence of black residential clustering would suffice to establish electoral discrimination. In lifting language directly from *Whitcomb* and *White*, Congress thus spurned the notion that black voters were entitled to legislative seats reserved for black representatives. Minority voters were guaranteed not their "fair share" of political offices, but only a "fair shake" – a chance to play the electoral game by fair rules.[3] In fact, the language of Section 2 – guaranteeing minority voters an equal opportunity "to elect representatives of their choice" – plainly suggested

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[3] The "fair share," "fair shake" distinction is taken from Blumstein, *Defining Discrimination: Intent v. Impact*, 16 New Perspectives 30 (Summer 1984); *see also* Abram, *Affirmative Action: Fair Shakers and Social Engineers*, 99 Harv. L. Rev. 1315 (1986).

a definition of representation broader than that which would have been conveyed had the phrase read "*minority* representatives of their choice."

In addition, the concern was clearly with election contests in racist settings. Blacks, Congress concluded, lacked an equal chance to elect representatives of their choice where race had left them politically isolated – without potential allies in electoral contests. That focus was spelled out by numerous witnesses at the 1982 hearings and in the Senate Judiciary Committee Report as well. S. Rep. No. 417, 97 Cong., 2d Sess. (1982) (hereinafter "1982 Senate Report").

Thus, the 1982 Senate Report listed "factors" to which courts were instructed to refer in judging the merits of a vote dilution suit. They included a history of discrimination, racial polarization, a candidate slating process to which minorities were denied access, political campaigns characterized by racial appeals, and a lack of responsiveness on the part of public officials to minority interests. 1982 Senate Report at 28-29; Thernstrom, *Whose Votes Count? Affirmative Action and Minority Voting Rights* 192-197 (1987). The point of the list was clear: to help judges identify those situations in which either a history of discrimination or ongoing racism had left minority voters at a distinct disadvantage in the electoral process. Not only the list, but other language in the Report signalled the importance of past and present racism. The concern, the report noted, was with those exceptional

communities in which racial politics still dominated the electoral process." 1982 Senate Report at 32.[4]

That was the message as well of a number of civil rights advocates who testified at the 1982 hearings. For instance, Armand Derfner, a leading civil rights attorney and key witness, argued that single-member districts had no "precisely correct racial mix." The entitlement was not to districts that were, say, two-thirds black. Section 2 only promised an electoral process that was fluid – open to racial change – not "frozen." Courts were expected to ask if minority voters would have "some influence." Claims of dilution would rest, Derfner said, on "evidence that voters of a racial minority [were] isolated within a political system . . . 'shut out,' i.e. denied access . . . [without] the opportunity to participate in the electoral process." Voting Rights Act: Hearings on S. 1992 Before the Subcommittee on the Constitution of the Committee on the Judiciary, U.S. Senate, 97th Cong., 2d Sess. at 803 and 810

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[4] The 1982 Senate Report also cited a South Carolina district court decision in *McCain v. Lybrand*, D.S.C. No 74-281 (April 17, 1980), as an illustration of the faithful application of the already familiar "results" test. The plaintiffs had prevailed in that decision because black candidates, the court found, tended to lose elections "not on their merits but solely because of their race." A report issued by the Subcommittee on the Constitution to the Senate Committee on the Judiciary expressed concern that precisely that distinction would be lost. Not so, retorted the full committee's own report. In "most" jurisdictions white voters give substantial support to black candidates. But "unfortunately . . . there are still some communities . . . where racial politics do dominate the electoral process." 1982 Senate Report at 33. And in such communities "a particular election method can deny minority voters equal opportunities to participate meaningfully in elections." *Id.*

(testimony of Armand Derfner) (1982) (hereinafter "Senate Hearings").

When were minorities "frozen" out, however? No witness offered a definition of that total electoral exclusion against which the Act protected, except to say that the test had been met when a group had "really been unfairly throttled."[5] "Unfairly throttled" by racism, the 1982 Senate Report – and the entire history of the Act – made clear.

Some will argue that an interpretation of Section 2 that makes racist exclusion the test of electoral discrimination is at odds with the stated aim of those who amended the statute in 1982. Not at all. The objection in 1982 to the decision in *Mobile v. Bolden*, 446 U.S. 55 (1980), was to the demand that plaintiffs produce a "smoking gun." Advocates did not object, in other words, to the focus on racism, but only to this Court's alleged insistence on direct evidence of racist intent.

In sum, in revising Section 2, Congress unequivocally and properly rejected the notion of group entitlement to even one legislative seat – however concentrated or dispersed black residential patterns were found to be.[6] Had witnesses at the 1982 congressional hearings lobbied for an amended statute that would encourage race-based districting and thus guarantee legislative seats for members of designated minority groups, their arguments

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[5] 1982 Senate Hearings at 803.

[6] Residential patterns are relevant only to the availability of a remedy once a Section 2 violation is found. *Thornburg v. Gingles*, 478 U.S. 30 (1986).

would have certainly fallen on deaf ears. Such a demand was not even remotely possible politically.

3. Arguably Section 5 did necessitate retaining District 18 as majority-black, but even that case is not clear.

District 18 has been sending an African-American to Congress since 1971; it has become a safe black seat, and thus a districting plan that invites white candidacies by providing for a black population concentration under 50 percent would have arguably constituted retrogression in violation of Section 5. On the other hand, in the 1980s District 18 had lost black residents and gained Hispanics. *Vera*, 861 F. Supp. at 1315, 1323. Texas mapmakers were not content to maintain the district as majority-minority, however. They insisted on a constituency that was safely black, and in dividing the black and Hispanic populations into separate racially-identifiable districts, they created lines

> so tortuously drawn that an 8 1/2 x 11" map does not begin to show their block-by-block district lines. . . . The districts literally meander from one side of the street to the other and cross major thoroughfares. . . . The boundaries [became] so complex that the county clerk's office sent the wrong ballots to certain precincts and erroneously counted those votes with District 18. *Vera*, 861 F. Supp. at 1340.

Whether Section 5 demands that a majority-minority district must be kept racially pure – in this case, black – is doubtful, especially when the district lines end up chasing residentially dispersed voters, with the consequence

that a tortured configuration is drawn and voters are left "confused and frustrated." *Id.* at 1340.[7]

C. In misreading the Voting Rights Act, Texas took its cue from the Justice Department, whose interpretation of the statute has long been at odds with the legislation itself.

Texas read the Voting Rights Act as the Justice Department had long urged. Its understanding of the legislation rested squarely on a misunderstanding, but one that had been carefully crafted by the federal government.

The voting section of the Justice Department's Civil Rights Division has assumed freewheeling power to object to districting plans that did not seem "right" – racially "fair" – since at least 1980.[8] In theory, federal attorneys act in a quasi-judicial role. The legal standards they use to enforce the statute should track those that this Court has developed. In practice, however, maximization

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[7] Nor can it legitimately be argued that Section 5 incorporates the legal standards contained in Section 2. The two provisions are distinct. As the District Court for the District of Columbia has recently explained at length in two important decisions, Section 2 cannot be viewed as part of the preclearance provision; the one was never "incorporated" into the other. *New York v. United States*, 874 F. Supp. 394, 397-98 (1994); *Georgia v. Reno*, 881 F. Supp. 7, 12 (1995). The Department's guidelines erroneously state otherwise. Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R., § 51.55 (b)(2).

[8] This criticism is developed in detail in Thernstrom, *Whose Votes Count? Affirmative Action and Minority Voting Rights* 157-191 (1987).

became the test of racial fairness by which the Justice Department routinely judged districting plans.[9] Thus, the New Orleans plan approved by this Court in *Beer v. United States*, 425 U.S. 130 (1976), would not now pass administrative review; what this Court precleared, the Justice Department will not.

It is of vital importance that this Court once again give clear guidance as to the legal standards contained in Sections 5 and 2; without such guidance, the Justice Department has *carte blanche* to insist that jurisdictions follow its dictates or come to Washington to defend their actions. The Voting Rights Act fundamentally altered traditional federal-state relations. Though the reasons for doing so were compelling, the attendant power should be exercised in a manner mindful of the potentially sweeping impact on local self-governance. Federal intrusion on constitutionally sanctioned local prerogatives is all the greater when the legal boundaries are unclear and decisions are made on the basis of seeming administrative whim.

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[9] During the Bush Administration, the obligation to draw a maximum number of majority-minority districts became no secret. The assistant attorney general for civil rights regularly insisted that minority voters were entitled to their "fair share" of political power. *See, e.g.*, Mr. Dunne's speech to the American Bar Association, Atlanta, Georgia, August 10, 1991, *cited in* Thernstrom, *Shaw v. Reno: Notes From a Political Thicket*, Public Interest Law Review 1994 at 39. There is literally no disagreement, across the political spectrum, that the Act came to require, in the view of the Justice Department, the creation of majority-black single-member districts wherever possible. Indeed, the question has now become the limits and wisdom of that strategy. *See, e.g.*, Guinier, *The Tyranny of the Majority* (1994).

II. THIS COURT'S RESOLUTION OF THESE STATUTORY ISSUES CARRIES PROFOUND CONSEQUENCES FOR OUR FUTURE AS A MULTIRACIAL, MULTIETHNIC SOCIETY.

Districts 18, 29, and 30 are racial classifications for familiar affirmative action ends.[10] The point of Texas' race-conscious districting was precisely that of most affirmative action policies: to provide maximum protection for minority candidates from white competition. Law school affirmative action programs, by setting separate admissions standards, pit black and Hispanic applicants primarily (sometimes only) against other members of the racial group. Likewise, "safe" black and Hispanic legislative districts amount to protective racial sorting. Their point is to ensure electoral contests in which minority candidates compete only against other minority candidates, eliminating potential white competitors.

Questions involving affirmative action in the electoral sphere are not simply about who ends up where in a districting map. They go to the very heart of how we see ourselves as a multiracial, multiethnic nation. At issue between the opposing sides in this case are quite different views of American society, the place of blacks in it, its openness to change, the nature of democratic representation, and the costs of race-conscious policies. This Court's decision will shape our future in far-reaching ways.

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[10] By "affirmative action," we mean race-conscious action to secure equal outcomes for certain designated groups.

A. Affirmative action policies are unnecessary and quite possibly counterproductive in the electoral sphere.

1. The premise that minority candidates can get elected in majority-white settings only very rarely and under exceptional circumstances is not supported by the evidence. Neither black nor Hispanic officeholding depends upon majority-minority constituencies; whites vote for black and Hispanic candidates.

"[T]he existence of racially polarized voting in [Harris and Dallas] counties is established by overwhelming evidence of which the Legislature was well aware," the Brief for the Rev. William Lawson (at 49) states. The doors of political opportunity are still closed, appellants argue. Black and Hispanic candidates remain at the mercy of racist white opposition. Hence the need for protective policies – for race-based districts drawn to ensure black officeholding, which appellants argue is an implicit statutory promise.

This assessment of both the American racial landscape in general and that of Texas in particular is not only bleak but wrong. There is general agreement that from the outset the Voting Rights Act promised more than simple access to the polling booth. The architects of the statute clearly expected that black ballots would mean black power. Not just black political influence, but blacks elected to public office. But, whatever their initial validity, in 1995 such extraordinary protective policies as the deliberate creation of safe black districts are not necessary.

Whites not only say they will vote for black candidates; they do so, often casting their ballots for an African-American running against a white opponent. That choice is most often available in mayoral contests. Conventional wisdom has it that the overwhelming majority of black mayors have been elected from majority-black cities. This is true but misleading. Most of those black "cities" are in fact tiny majority-black towns in the South. Eliminate those small urban dots on the southern map, focus on cities of 50,000 or more in population, and quite a different picture emerges. A large majority of the black mayors elected in such cities over the last 30 years have not had the benefit of a majority-black constituency.[11]

It is not only in races for a mayor's seat that white voters choose black candidates over those who are white. L. Douglas Wilder, in his successful gubernatorial run in 1989, got an estimated 40 to 43 percent of Virginia's white vote. Skeptics will say that figure still represents only a minority of the white electorate, but Charles Robb, the white Democratic governor who preceded Wilder, did only a shade better – 45 percent. Illinois (11.6 percent black) elected Carol Moseley-Braun as its U.S. Senator in 1992. In 1994, Ohio elected J. Kenneth Blackwell as state treasurer and New York chose H. Carl McCall as state comptroller. Also in 1994, J.C. Watts won a congressional seat in an 83 percent white Oklahoma district. This is not

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[11] *See* Thernstrom and Thernstrom, "The Promise of Racial Equality," in *The New Promise of American Life* (Alexander and Finn, eds. 1995). However, while the essay asserts that 83 percent of black mayors elected in cities over 50,000 in population have not had the benefit of a majority-black constituency, a recalculation suggests the figure should have been 66.7 percent.

a new phenomenon. Andrew Young was elected to Congress in 1972 from Georgia's fifth district, which was then majority-white.

2. There is no credible evidence that minority candidates cannot get elected from majority-white districts in Texas.

Appellants' briefs all argue that whites usually vote as a bloc against black and Hispanic candidates. *See, e.g.*, Brief for the Rev. William Lawson at 51. The Brief for the United States (at 3) notes that "[n]o district in Texas with a majority of white residents has ever elected a black member to Congress." Hence the need for safe minority constituencies.

In fact, for four reasons, that record is not telling. First, white voters in Texas have helped elect blacks and Hispanics to a variety of offices; there is no reason to believe a congressional seat is out of bounds. For example, the current Attorney General for the State of Texas is Hispanic. In both Houston and Dallas, white voters have elected Hispanics in at-large elections to the city council and the school board, as well as for judicial positions. In May 1995, Ron Kirk, an African-American who had served as Texas Governor Ann Richards' secretary of state, took the mayor's seat in Dallas. Approximately 40 percent of white voters cast their ballots for Kirk, who won with 60 percent of the total vote. The coalition that swept him into office was white and black. (Hispanics supported an Hispanic candidate.) Moreover, white real estate developers and other Anglos prominent in the business community turned their back on the candidacy

of a white lawyer and poured money into Kirk's campaign.[12]

Second, the past is not the future. White racial attitudes have been changing fast, and the record of black and Hispanic electoral success in 1975 tells us little about the prospects for such success in 1995. Third, black candidates cannot win contests they do not enter. And scholars attempting to assess white willingness to support minority candidacies on the basis of election returns cannot learn anything from Texas elections in which no black or Hispanic candidate has been in the race. And finally, congressional candidates – whatever their color – cannot win elections if their political views are at odds with the majority of voters in their district. California Rep. Ronald V. Dellums gets elected from a constituency that includes Berkeley and like-minded suburbs, but few majority-white districts are as left-leaning as his. Particularly in the South, centrist and conservative candidates (whether white or black) will do better than those who are militantly liberal. J.C. Watts would not have been elected in Oklahoma had he run as a liberal Democrat.

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[12] Furthermore, in 1990, both political parties nominated black candidates to the Texas Court of Criminal Appeals. In 1988, Texas voters elected an Hispanic, Raul Gonzales, to the Texas Supreme Court. He received the third largest number of votes of any candidate on the ballot, following George Bush for President and Lloyd Bentsen for U.S. Senator.

3. The Voting Rights Act is a statute designed to protect minority voters, not black and Hispanic officeholders. Race-based districting does not necessarily protect minority voters.

Safe minority districts are a gift to minority politicians. But they are not necessarily in the interest of black or Hispanic voters – or, indeed, in the public interest. The Brief for the United States (at 7) notes that "[t]he black community in Dallas County believed a 50% black population district to be necessary. . . . " But aside from the irrelevance of such convictions to the Fourteenth Amendment question presented in this case, the reference to the "black community" is misleading. Clearly, that was the conviction of black politicians, who, like all elected officials, like to run in districts designed to be safe for them.

Whether majority-minority districts are advantageous to black and Hispanic voters is an open question, the answer to which depends in part on the context. In certain settings, a greater dispersion of black voters over more "influence districts" will mean better representation, since more public officials, both black and white, will owe their election in part to black support.

4. Affirmative action policies must be temporary, and subject to modification or curtailment when their remedial objectives are accomplished. But, once created, racially-gerrymandered districts will be far more difficult to root out.

Legislative districts that protect black (or Hispanic) candidates from white competition serve an affirmative action purpose. They are analogous to separate lists for black and white candidates for spots on a police force or seats in a medical school class. They differ, however, in a crucial respect. Preferential admissions and hiring policies are, in theory, temporary; their life will end, proponents argue, when such protective racial sorting is no longer necessary. That is not likely to be the case with racially gerrymandered legislative districts.

If such districts are allowed to stand, they are likely to be permanent. Considerations of incumbency and politics aside, in the covered jurisdictions of the South and elsewhere, the retrogression test of Section 5 forbids backsliding – which arguably means any decrease in the number of secure black legislative seats. Plans approved today most often become the absolute baselines against which subsequent districting changes are measured through at least 2007, when Section 5 is now scheduled to expire. *Johnson v. Miller*, 864 F. Supp. 1354, 1386 (S.D. Ga. 1994) ("any redistricting plan designed for proportionality, that is upheld by the Court today, will not be easily uprooted in the foreseeable future").

B. Proportional representation is the standard of racial fairness that runs through appellants' briefs. That standard assumes the necessity of protective racial sorting in a severely divided society. America is not such a society.

That in a racially fair political system blacks and Hispanics would hold office in proportion to their numbers in the population is a conviction that runs through all the briefs for appellants. *See, e.g.*, Brief for the United States at 15 "the failure to create a minority opportunity district would leave minority group members substantially underrepresented when compared to their percentage in the relevant population").

Disproportionately low-black officeholding denies representation to a group for whom members of no other group can speak, the argument for a proportionality standard implies. In severely divided societies, whites cannot speak for blacks, or (by logical extension) blacks for whites. Blacks – it is assumed – are a nation within our nation, a people apart. And as such, they are entitled, as a matter of elementary fairness, to representation in proportion to their population strength. And that entitlement holds whatever the residential patterns of the group in question; Hispanic suburbanization thus means districting plans that scoop up pockets of suburban Hispanic voters, who may have more in common with their white neighbors than with inner-city residents of any color.

The United States, however, is not such a society, and indeed as this Court has noted, such reasoning rests on "stereotypical assumptions the Equal Protection Clause forbids." *Miller v. Johnson*, 115 S.Ct. at 2481, 2487. The

view that "individuals of the same race share a single political interest" rests on the demeaning notion that minority group members think alike, "the precise use of race as a proxy the Constitution prohibits." *Id.*

1. The evidence does not support the view that blacks or Hispanics are a people apart, and our public law should not treat them as such.

In 1945, the novelist and social critic, Richard Wright, described his boyhood days in a South in which "whites had drawn a line over which we dared not step."[13] That South has disappeared, and the position of African-Americans within American society has been transformed. More than 80 percent of blacks polled in national surveys report having whites as neighbors.[14] Few whites say that they wouldn't want to live next door to a black family, although 30 percent object to having a Fundamentalist as a neighbor.[15] African-Americans are permanent and influential political players – in both North and South. They are partners in powerful law firms, and doctors at distinguished hospitals. An African-American model in an upscale Bloomingdale's clothing ad is now business as usual; as are black faces in TV commercials

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[13] Wright, *Black Boy* 251 (1945).

[14] Feigelman and Gorman, *Blacks Who Live Near Whites: 1982 and 1987*, Sociology and Social Research 202-207 (July 1990).

[15] Schuman, Steen, and Bobo, *Racial Attitudes in America: Trends and Interpretations* 106-107 (1985); *see also* Bates, *Battleground* 64 (1993) (citing 1989 Gallup Poll).

selling every sort of product. The Bill Cosby show, watched by 20 million viewers, earned NBC a billion dollars.

Both African-Americans and Hispanics still have incomes below the national average, are less likely than whites to have a college degree, have higher poverty rates, and rank behind whites in most measures of socio-economic status. But neither group is composed of a people apart. As the district court noted in *Johnson v. Miller*, 864 F. Supp. at 1390, "[b]lacks in Georgia did indeed rise from a common heritage of slavery and oppression, but with the shedding of those burdens they have begun to follow myriad, distinctive paths."

Blacks are clearly the more excluded of the two groups, but the historical picture has changed dramatically. Until the 1960s almost all of the small numbers of African-American students attending college were to be found in historically black institutions; today the number in higher education has grown explosively, and six out of seven of them attend predominantly white institutions. "Buy Black" campaigns routinely flop. Black separatist parties go nowhere. This picture could obviously be enlarged, but the point should be clear. The United States is not yet a fully integrated society, but it has moved in that direction with impressive speed in the four decades since *Brown v. Board of Educ.*, 347 U.S. 483 (1954). A separate and excluded people may be entitled to legislative set-asides, seats reserved to ensure their political inclusion. In 1995, not even blacks need such an extraordinarily protective arrangement.

2. The legal ratification of the notion of three societies – one white, one black and one Hispanic – may make it a self-fulfilling prophecy.

Neither African-Americans nor Hispanics are truly a people apart, a racially-defined nation within our nation. And yet if both they and whites believe they are, it may well become true. This is especially the case if that perception informs the law. Separate admissions procedures for whites and minorities, separate hiring processes, separate legislative districts: given a stamp of approval by Congress and this Court, they paint an official and influential portrait of American society.

The drive for proportionate racial and ethnic representation by means of race-based districting is informed by unwarranted pessimism, which if embodied in law threatens to do far more harm than good.

3. The deliberate gerrymandering of majority-minority districts cannot, in any case, be justified.

Congressional races take place within the confines of geographically-based single-member districts. Racially gerrymandered constituencies are an attempt to provide minorities, and only minorities, with a means to circumvent the constraints within which members of all other groups must work. *See* Butler, *Affirmative Racial Gerrymandering, supra*. To impute to Congress an intent to permanently remove two groups from the pluralism of American politics not only misreads the basic objectives

of the Voting Rights Act, but would ensure the very segregation the Act was intended to cure.

C. Racial classifications are dangerous to everyone. The harm is to whites, blacks and Hispanics alike.

Racial classifications deliver the message that skin color matters – profoundly. They suggest that white folks and black folks are just not the same, that race and ethnicity are the qualities that really matter. They imply that individuals are defined by blood – not by character, social class, religious sentiments, age, or education. But categories appropriate to a caste system are a poor basis on which to build that community of equal citizens upon which democratic government depends. Equal citizens are free to define themselves, and do so differently in different contexts. A voter whose choice of a candidate in a presidential primary is shaped primarily by racial considerations might react to the issues in a school board contest as parents of other races do. It is precisely that fluidity of individual political identity that prevents the formation of castes, which are rigid and hierarchical by nature.

"The destinies of the two races, in this country, are indissolubly linked together . . . ," Justice Harlan wisely noted in his dissent in *Plessy v. Ferguson*, 163 U.S. 537, 560 (1896) (Harlan, J., dissenting).[16] It is obviously the case.

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[16] On Harlan's dissent and the history of the color-blind idea, *see* Kull, *The Color-Blind Constitution* (1992).

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Supreme Court, U.S.
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Nos. 94-805, 94-806, 94-988

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

GEORGE W. BUSH, Governor of Texas, *et al.*,
and

REV. WILLIAM LAWSON, *et al.*,
and

UNITED STATES OF AMERICA,
Appellants,

v.

AL VERA, *et al.*,
Appellees.

On Appeal from the United States District Court for the Southern District of Texas

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BRIEF OF WASHINGTON LEGAL FOUNDATION, CENTER FOR EQUAL OPPORTUNITY, AND ALLIED EDUCATIONAL FOUNDATION AS *AMICI CURIAE* IN SUPPORT OF APPELLEES

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QUESTIONS PRESENTED

Amici will address the following questions:

I. Whether the direct and circumstantial evidence that Texas was motivated by racial considerations in formulating Congressional Districts ("CDs") 18, 29, and 30, and their contiguous districts, was sufficient to trigger "strict scrutiny" judicial review?

II. Whether Appellants have demonstrated that in drawing CDs 18, 29, and 30 along racial lines, Texas was serving a compelling state interest in a narrowly tailored manner?

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INTERESTS OF *AMICI CURIAE*

The Washington Legal Foundation (WLF) is a nonprofit public interest law and policy center with more than 100,000 supporters nationwide, including many in

Texas. While WLF engages in litigation and the administrative process in a variety of areas, WLF devotes a substantial portion of its resources to promoting the ideal of a color-blind society in which the civil rights of all Americans are equally respected. To that end, WLF has appeared before this Court as well as other state and federal courts in cases raising important civil rights issues. *See, e.g., Miller v. Johnson,* 115 S. Ct. 2475 (1995); *Adarand Constructors, Inc. v. Pena,* 115 S. Ct. 2097 (1995); *Shaw v. Reno*, 113 S. Ct. 2816 (1993); *Chisom v. Roemer*, 111 S. Ct. 2354 (1991); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989); *Podberesky v. Kirwan*, 38 F.3d 147 (4th Cir. 1994), *cert. denied*, 115 S. Ct. 2001 (1995).

The Center for Equal Opportunity (CEO) is a nonprofit educational organization founded in 1987 dedicated to establishing in America a colorblind government in a colorblind society, and, to that end, to protecting the civil rights of all Americans. CEO has appeared before this Court as *amicus curiae* on a number of occasions, including in *Miller v. Johnson*, 115 S. Ct. 2475 (1995); *Shaw v. Reno*, 113 S. Ct. 2816 (1993); and *St. Mary's Honor Center v. Hicks*, 113 S. Ct. 2742 (1993).

The Allied Educational Foundation (AEF) is a nonprofit charitable and educational foundation based in Englewood, New Jersey. Founded in 1964, AEF is dedicated to promoting education in diverse areas of study such as history, law, and public policy, and has appeared as *amicus curiae* before this Court on a number of occasions.

Amici believe that the people of Texas were ill-served by the congressional districting scheme being challenged in this case. Racial gerrymandering -- by placing the state's

stamp of approval on the notion that people of different races are inherently different from one another -- is a giant step backward from our goal of a color-blind society. Nothing in the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973 *et seq.*, requires such gerrymandering. Moreover, experience demonstrates that blacks and Hispanics are fully capable of winning elections in districts that have not been gerrymandered to ensure African-American or Hispanic electoral majorities.

Amici believe that their experience in litigating issues of this sort may prove of assistance to the Court in its consideration of this case. *Amici* submit this brief on behalf of Appellees with the written consent of all parties. The written consents are on file with the Clerk of the Court.

STATEMENT OF FACTS

In the interests of judicial economy, *amici* hereby adopt by reference the Statement of the Case contained in Appellees' brief.

In brief, Appellees are residents of Texas who object to the Congressional districting plan adopted by the Texas legislature in August 1991. This appeal focuses on three of Texas's 30 Congressional districts: Congressional Districts ("CD") 18 and 29 in the Harris County/Houston area and CD 30 in the Dallas area. The districting plan was expressly designed so that a majority of the citizens in CDs 18, 29, and 30 are members of racial minority groups (hereinafter referred to as "majority-minority" districts).

Some sort of redistricting scheme had been made necessary by Texas's substantial population growth during

the 1980's, as measured by the 1990 Decennial Census. The growth entitled Texas to 30 seats in the U.S. House of Representatives, whereas it previously had had only 27 seats.

Texas has conceded that, early on in the redistricting process in 1991, the state legislature decided that the three new districts "would all be new minority opportunity districts to be located in the Dallas, Houston, and South Texas areas." Texas's Brief at 4.[1] While a variety of factors played a role in the precise location of the district lines, it is uncontested that Texas never wavered from its objective of creating three new "minority opportunity districts" -- and that, in fact, it obtained its objective.[2]

Blacks have long constituted the largest single racial group in CD 18 in Houston. In every election since 1970,

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[1] The terms "minority opportunity district" and "minority influence district" generally connote districts in which a specified racial minority group may or may not constitute a majority of the population but in which the group nonetheless is expected (due to its voting strength) to have a substantial influence on the outcome of elections. Nonetheless, for ease of understanding, *amici* will use the term "majority-minority district" throughout this brief -- since all three districts at issue in this appeal are, in fact majority-minority. CD 30 (in Dallas) is 50.0% black and 17.1% Hispanic. *See* Appendix to Texas Jurisdictional Statement ("J.S. App.") 27a. CD 18 (in Houston) is 50.9% black and 15.3% Hispanic. J.S. App. 35a. CD 29 (also in Houston) is 60.6% Hispanic and 10.2% black -- albeit among U.S. citizens living in the district, the voting-age population is only 42.5% Hispanic. *Id.*

[2] This appeal involves the constitutionality of two of the three new districts (CD 29 in Houston and CD 30 in Dallas) as well as CD 18 in Houston. The constitutionality of the third new district (CD 28, a Hispanic-majority district in South Texas) is not at issue in this appeal.

CD 18 has elected an African-American to serve as its U.S. Representative. However, CD 18's population became increasingly Hispanic during the 1980s; by 1990, the district's population was 42.2% Hispanic and only 35.1% African-American. J.S. App. 35a. As the United States recognized in its brief, "Throughout the 1980s, blacks and Hispanics had voted together" in Congressional elections in CD 18. Brief for United States at 9. Appellants contend that that coalition "had begun to disintegrate" by 1990 (*id.* at 10), and Hispanic leaders in Houston began pushing for separation of Houston's black and Hispanic communities into separate Congressional districts -- thereby creating "a new Hispanic safe seat in Harris County while preserving the safe African-American seat in District 18." J.S. App. 36a. Leaders in the Texas legislature concurred; and from the beginning of the redistricting process, it was agreed that the population of CD 29 (the new Hispanic-majority district in Houston) would be 60-61% Hispanic. *Id.* at 38a-39a. While non-racial considerations (especially the desire of then-State Senator Gene Green to include as much of his Senate district as possible in CD 29) played a role in the precise location of CD 18's and CD 29's district lines, the legislature's overriding concern was to ensure that CD 29 met its quota for Hispanics and that CD 18 was made majority-black. *Id.*

Prior to 1992, no African-American had been elected to Congress from the Dallas area. The black community in Dallas in 1991 began lobbying the Texas legislature for creation of a black-majority district in Dallas, and the legislature agreed early on in the redistricting process to do so. J.S. App. 28a. While other considerations (particularly the desire of several incumbents in adjacent districts to retain as many reliable Democratic votes as possible

from the black community) played a role in the precise location of the new district's (CD 30's) lines, the legislature's overriding concern was to ensure that CD 30 was majority-black. *Id.* at 63a.

The result of Texas's redistricting process was that CD 18, 29, and 30 are among the most weirdly shaped Congressional districts in the nation. Although each of the three districts is confined to a single metropolitan area (and thus is not geographically large), none of the three qualifies as "compact" under any of the commonly accepted definitions of that term. Indeed, in order to separate Houston's integrated black and Hispanic populations, the legislature was required to resort to breaking apart voter tabulation districts (VTDs) and to redistrict on a block-by-block basis.[3] The highly irregular district lines led to widespread confusion, as voters could not easily determine what districts they lived in.

On November 8, 1991, the U.S. Attorney General notified Texas that he would not object to the state's Congressional districting plan under § 5 of the federal Voting Rights Act, 42 U.S.C. § 1973c. Nonetheless, the letter granting preclearance under § 5 expressed reservations about the plan:

> While we are preclearing this plan under Section 5, the extraordinarily convoluted nature of some districts

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[3] Indeed, as the district court found, the only possible explanation for the decision to split VTDs -- a procedure never employed prior to 1991 -- was to separate voters by race. J.S. App. 26a. That is so because REDAPPL (the computer software used by the legislature in drawing district lines) included no information about residents on the sub-VTD level other than their race/ethnic background. *Id.*

> compels me to disclaim any implication that the proposed plan is otherwise lawful or constitutional.

J.S. App. 8a.

Appellees (six registered voters residing in CDs 18, 25, 29, and 30) filed suit in January 1994 in the United States District Court for the Southern District of Texas. They alleged that Texas's 1991 Congressional districting plan violated their rights under the Equal Protection Clause in that 24 of the state's 30 districts were drawn so as to segregate voters on the basis of race.

Following a trial in June/July 1994, a three-judge court struck down the Texas districting plan with respect to CDs 18, 29, and 30, but rejected Appellees' claims in all other respects. J.S. App. 50a-75a. The court held that CDs 18, 29, and 30 were subject to "strict scrutiny" because an effort to segregate voters by race was the "primary" consideration that went into drawing up lines for those districts. *Id.* at 62a-69a. The court then held that those three districts could not survive "strict scrutiny" because they were not "narrowly tailored" to accomplishing any compelling state interest. *Id.* at 69a-74a. The court held that while compliance with §§ 2 and 5 of the Voting Rights Act constitutes a compelling state interest, CDs 18, 29, and 30 could not be justified on that basis because they were not "narrowly tailored" to that purpose -- because three minority-influence districts could have been established without resort to such extensive, intentional separation of voters by race. *Id.* The court rejected Appellees' claims with respect to 21 other congressional districts, finding "strict scrutiny" was inappropriate because race was not a "significant" factor in drawing lines for those districts. *Id.* at 74a-75a.

On December 23, 1994, this Court stayed the relief granted by the district court. On June 30, 1995, the Court noted probable jurisdiction over each of the three appeals filed from the district court judgment.

SUMMARY OF ARGUMENT

The district court applied the proper standard in determining whether "strict scrutiny" judicial review is applicable in a case challenging congressional reapportionment legislation. Anticipating this Court's decision in *Miller v. Johnson*, 115 S. Ct. 2475 (1995), the district court properly held that strict scrutiny applies when race is the "primary" factor that determined the composition of the three districts at issue. The district court's findings that race was the primary factor in drawing those districts was not clearly erroneous and thus should be upheld.

Texas failed to demonstrate that its adoption of legislation creating CDs 18, 29, and 30 was a narrowly tailored response to any compelling interest of the state. The district court properly declined to apply a "strong basis in evidence" standard, which would make it far too easy for States to justify racial classifications.

Finally, the Court need not be concerned that a decision upholding the district court's decision would open the floodgates on redistricting litigation. The district court's standard is not an easy one for plaintiffs to meet; indeed, in this case, Plaintiffs failed to prevail with respect to 21 of the 24 districts they challenged. Moreover, the district court's decision will not prevent creation of numerous minority districts. Such districts are totally unobjectionable so long as it is not true that "race was the predominant factor motivating the legislature to place a

significant number of voters within or without a particular district." *Id.* at 2488.

ARGUMENT

I. STRICT SCRUTINY IS WARRANTED WHENEVER RACE WAS THE OVERRIDING PREDOMINANT FORCE DETERMINING THE LINES OF A CONGRESSIONAL DISTRICT

A long line of decisions from this Court makes clear that programs that discriminate on the basis of race are highly disfavored under the law. Racial classifications are a "highly suspect tool" that reviewing courts should uphold only under extremely limited circumstances. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 483 (1989) (plurality opinion); *id.* at 520 (Scalia, J.). That is so because, "Classifications of citizens solely on the basis of race 'are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.'" *Shaw*, 113 S. Ct. at 2824 (quoting *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943)). The Court has also been mindful of the potentially harmful effects of even the most remedial of racial classifications: "Racial classifications of any sort pose the risk of lasting harm to our society. They reinforce the belief, held by too many for too much of our history, that individuals should be judged by the color of their skin." *Shaw*, 113 S. Ct. at 2832.

Racial classifications are no less suspect simply because they are employed on behalf of a historically disadvantaged minority group rather than on behalf of the white majority. *Croson*, 488 U.S. at 494 (plurality opinion); *Regents of University of California v. Bakke*, 438 U.S. 265, 295-299 (1978)(Powell, J.). *Shaw* put to rest

any argument that the Court will treat deferentially racial classifications that favor groups that suffered from past discrimination:

> [The dissent] argues that racial gerrymandering poses no constitutional difficulties when district lines are drawn to favor the majority. . . We have made clear, however, that equal protection analysis "is not dependent on the race of those burdened or benefitted by a particular classification." *Croson*, 488 U.S. at 494 (plurality opinion); see also *id.* at 520 (Scalia, concurring in judgment). Accord, *Wygant [v. Jackson Board of Education]*, 476 U.S. [267,] 273 [(1986)] (plurality opinion). Indeed, racial classifications receive close scrutiny even when they may be said to burden or benefit the races equally.

Shaw, 113 S. Ct. at 829.

A. Districts Drawn Along Racial Lines Are Not Absolved from Strict Scrutiny Simply Because a State Was Attempting to Comply with the Voting Rights Act

The parties do not seriously dispute that race was the predominant factor in the Texas legislature's decision to draw lines for CDs 18, 29, and 30 as it did. Texas openly admits the legislature's racial motivation throughout its brief. *See, e.g.*, Texas Brief on the Merits at 3 ("the shapes of the districts resulted from" three listed factors, including "the desire to make the districts minority opportunity districts"); *id.* at 3 ("the Legislature drew these districts as opportunity districts in order to comply with the Voting Rights Act"); *id.* at 4 ("the Legislature decided early in the redistricting process that the three additional

congressional seats that Congress reapportioned to Texas after the 1990 census would all be new minority opportunity voting districts to be located in the Dallas, Houston, and South Texas areas.").

In light of this evidence, the district court's decision to apply a "strict scrutiny" standard of review was mandated by the Court's subsequent decision last term in *Miller v. Johnson*, 115 S. Ct. 2475 (1995). The Court held in *Miller* that strict scrutiny will apply to a districting plan whenever the plaintiff can establish that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Miller*, 115 S. Ct. at 2488. In denying the applicability of "strict scrutiny," Texas and the Lawson Appellants assert that other factors -- particularly a desire to assist incumbents as well as favored state legislators planning to run for open seats -- played a major role in the final configuration of CDs 18, 29, and 30.[4] They are undoubtedly correct that nonracial political considerations played a major role in the precise placement of district lines. But *Miller* nonetheless mandates application of "strict scrutiny" whenever, as here, the overriding concern was to create majority-minority districts and no amount of concern over the need for incumbency protection was going to be allowed to stand in the way of that goal. In order for strict scrutiny to apply, *Miller* requires only that race be the predominant factor in the assignment of "a significant number of voters" to their respective districts, not the factor that explains every district line.

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[4] *Amici* find it telling, however, that Appellant United States has not joined in the challenge to the district court's application of a "strict scrutiny" standard of review.

In any event, the district court's factual finding that race was the "primary" factor that determined the composition of CDs 18, 29, and 30 (J.S. App. 62a-69a) is not clearly erroneous and thus should be upheld on appeal.[5] We cannot understand how those findings can be challenged as "clearly erroneous" in light of the numerous statements by state official (all in the trial record) that CDs 18, 29, and 30 would be drawn so as to ensure election of minority candidates, and in light of Appellants failure to present any plausible explanation (other than a desire to assign voters to districts by race) for Texas's decision to break up VTDs and to redistrict on a block-by-block basis.

Both Texas and the Lawson Appellants argue that assignment of voters to districts on the basis of race should not be deemed racially motivated if the assignments are based on a desire to comply with the Voting Rights Act. The Lawson Appellants argue, for example, that a legislature's "legitimate consideration of race for valid reasons (such as the need to avoid retrogression and fragmentation)" is not evidence that it "acted from predominant racial motives." Brief of Lawson Appellants at 38-39. The Court has repeatedly rejected this argument that there is a "legitimate" category of racial classifications that is not subject to strict scrutiny. *See, e.g., Adarand Constructors, Inc. v. Pena*, 115 S. Ct. 2097, 2111 (1995) ("any person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest judicial scrutiny."). It is only after

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[5] *Miller* held that determinations regarding the predominant motivating factor in district line drawing are factual findings subject to a "clearly erroneous" standard of review. *Miller*, 115 S. Ct. at 2488, 2489.

subjecting a racial classification to the closest possible review that a court can satisfy itself that the classification is as "legitimate" or "benign" as claimed. As the Court explained in *Croson*:

> Absent searching judicial inquiry into the justification for such race-based measures, there is simply no way of determining what classifications are "benign" or "remedial" and what classifications are in fact motivated by illegitimate notions of racial inferiority or *simple racial politics*. Indeed, the purpose of strict scrutiny is to "smoke out" illegitimate uses of race by assuring that the legislative body is pursuing a goal important enough to warrant use of a highly suspect tool.

Croson, 488 U.S. at 493 (emphasis added).

We agree with Texas and the Lawson Defendants that, under appropriate circumstances, separating voters into different districts in order to comply with the Voting Rights Act is permissible under the Equal Protection Clause. However, *Miller* requires that, in every case, such conduct be subjected to the strictest of judicial scrutiny before being deemed "legitimate."

B. The District Court's Standard Will Not Subject Every Redistricting Effort to Exacting Judicial Review

Appellants argue that the standard of review applied by the district court is overly harsh and will subject every legislative redistricting effort to a "strict scrutiny" standard of review. The Lawson Appellants argue, for example, that the district court "erroneous[ly] limit[ed] the non-racial

districting criteria that the State may take into account," and thereby "eviscerated the opportunity afforded the State by this Court's decision in *Miller* to defeat [a racial gerrymander] claim by showing that non-racial considerations were not 'subordinated to race' in the districting process." Brief of Lawson Appellants at 36.

Appellants' assertion that the district court's standard of review will lead to wholesale judicial re-examination of electoral districting plans is belied by the results of this very case. Appellees challenged 24 of Texas's Congressional districts under the Equal Protection Clause; the district court found that only three of those districts should be subjected to "strict scrutiny." With respect to the other 21 districts, the district court found that race had played a role in the drawing of district lines, but that application of strict scrutiny was not warranted because racial considerations were not "proportionately significant" in relation to the district as a whole. J.S. App. 75a. The district court applied strict scrutiny to CDs 18, 29, and 30 only after finding that "race was the primary consideration in the construction of District 30" (J.S. App. 63a) and that "[t]he goal of separating Hispanic and African-American residents from each other and from the white population for purposes of voting led to the creation of" CDs 18 and 29. J.S. App.

67a.[6]

Miller recognized that drawing a "community" into a single electoral district is a valid, race-neutral districting principal, even if the members of such a "community" have "a particular racial makeup." *Miller*, 115 S. Ct. at 2490. But nothing in the district court's decision undercuts a state's ability to bring together such communities of interest. More importantly, there is no evidence in this case that Texas was motivated by a desire to bring together

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[6] Appellants argue repeatedly that a desire to assist incumbents (or to assist favored state legislators who hoped some day to be incumbents) was the predominant factor driving the establishment of district lines in CDs 18, 29, and 30. After engaging in an extensive discussion of the evidence at trial, the district court rejected that interpretation of the legislature's principal motivation. In particular, the district court found that while incumbency protection was an established tradition in Texas redistricting plans, that tradition historically had not been so strong as to overcome other traditional Texas districting principles: creation of reasonably compact districts and respect for political subdivisions. J.S. App. 54a-55a. Moreover, the district court found, a desire to protect incumbents could not begin to explain the highly contorted, VTD-busting district lines drawn for CDs 18, 29, and 30. J.S. App. 59a-60a. At the very least, those findings are not clearly erroneous.

Those findings also refute Appellants' repeated claims that the district court simply ignored their evidence that incumbent protection was Texas's principal motivation in drawing the disputed district lines; while the district court's opinion includes language disparaging incumbent protection as a race-neutral districting principle (such as the warning that incumbent protection "is a valid state interest only to the extent that it is not a pretext for unconstitutional racial gerrymandering" (J.S. App. 59a)), the district court considered all of Appellants' proffered evidence before determining that race was the predominant factor driving the legislature's decision regarding which voters to include in CDs 18, 29, and 30.

any such race-based "communities." Rather, the evidence showed that in Dallas, significant portions of the inner-city black community were excluded from CD 30 and were replaced by distant neighborhoods that were included for the sole purpose of achieving the desired 50%-black population quota. In Houston, racially-integrated communities were split up on a block-by-block basis and assigned to either the 18th or 29th Districts based solely on the predominant skin color on a given block.

It is true that any district drawn along racial lines for the predominant purpose of complying with the Voting Rights Act will be subject to strict scrutiny; but as *Adarand* and *Croson* explain, such scrutiny is wholly warranted. A state that has strong evidence that race-conscious districting is required by the Voting Rights Act and to remedy past discrimination need not fear such scrutiny; states that engage in racial gerrymandering in the absence of such evidence should properly be called to task for their constitutional violations.

Unfortunately, the cycle of redistricting that followed the 1990 census produced a sorry spectacle of racial line-drawing, as was perhaps best illustrated by the facts in *Miller*. Operating under a mistaken interpretation of the Voting Rights Act, the U.S. Department of Justice browbeat numerous states (particularly those subject to § 5 preclearance requirements) into creating the absolute maximum number of majority-minority electoral districts, without regard to traditional districting principles such as compactness. Now that the Court has made clear that the Voting Rights Act contains no such maximization principle (*see, e.g., Johnson v. DeGrandy*, 114 S. Ct. 2647 (1994); and *Growe v. Emison*, 113 S. Ct. 1075 (1993)), and has made clear in *Miller* and *Shaw* that there are strict constitu-

tional limits on race-motivated "remedial" districting, one can expect a sharp decrease in the frequency of race-motivated line drawing in future districting cycles -- and a resulting decrease in the frequency of court challenges.

In sum, the Court need not fear that the standard of review employed by the district court -- a standard of review that is strikingly similar to the standard of review later articulated by this Court in *Miller* -- will lead to wholesale constitutional review of all districting plans. Only in the rare case when, as here, a state discards virtually all traditional districting criteria and makes race/ethnicity the predominant factor in district line drawing will strict scrutiny come into play.

II. TEXAS LACKED A COMPELLING INTEREST SUFFICIENT TO JUSTIFY RACE-MOTIVATED CONGRESSIONAL DISTRICTING

Shaw held that once districting legislation is found to be "unexplainable on grounds other than race," it is subject to "the same close scrutiny" that the Court has given to "other state laws that classify citizens by race." *Shaw*, 113 S. Ct. 2825. Under those circumstances, the legislation is unconstitutional unless the state can demonstrate that its legislation "is narrowly tailored to further a compelling governmental interest." *Id.* at 2832.

Texas contends that it has a compelling interest in complying with the Voting Rights Act and that it adopted its redistricting scheme in order to further that compelling interest. While recognizing that compliance with the Voting Rights Act (to the extent that it is constitutional as applied) constitutes a "compelling" state interest, the district court held that CDs 18, 29, and 30 could not pass

constitutional muster because they are not "narrowly tailored" to achieving the goal of Voting Rights Act compliance. J.S. App. 69a-74a. That conclusion is fully supported by the evidence before the district court and relevant case law.

A. The U.S.'s Efforts to Incorporate the "Strong Basis in Evidence" Standard Into Voting Rights Act Cases Are Misplaced

Appellant United States takes issue not only with the results of the district court's "strict scrutiny" analysis but also with the strictness of that scrutiny. The United States argues that federal courts ought to accord a fair amount of deference to States that attempt to comply with the Voting Rights Act by creating race-driven electoral districts. It argues that a State -- in order to survive "strict scrutiny" -- need not demonstrate by *a preponderance of the evidence* that the State's race-motivated districting plan is required in order to comply with the Voting Rights Act and is narrowly tailored for that purpose; rather, a State need only meet a "strong basis in evidence" evidentiary standard. Brief for the United States at 23-26.

The United States's efforts to import the "strong basis in evidence" standard into this case is wholly misplaced. None of the case law cited by the United States (including *Croson*, *Wygant*, and *Miller*) supports application of that standard in this case. Accordingly, before addressing the merits of Appellants' Voting Rights Act arguments, *amici* will address the United States' efforts to relax the standard of review to which Texas's actions are subjected.

In contrast to this case (in which Texas claims a compelling interest in prospective compliance with the

Voting Rights Act), *Croson* and *Wygant* involved state actors attempting to defend race-based classifications by claiming a "compelling interest" in overcoming the present effects of past race discrimination. *Croson* held that such classifications could be upheld only upon a showing of a "strong basis in evidence" that there existed present effects of past discrimination by the state actor (*Croson*, 488 U.S. at 500) and that the race-based classification was "narrowly tailored" to eliminating such present effects. *Id.* at 507. The considerations that led the Court to adopt the "strong basis in evidence" standard in *Croson* and *Wygant* are inapplicable to this case.

The rationale behind the "strong basis in evidence" standard (a standard which places on defendants an evidentiary burden that is somewhat less than a "preponderance of the evidence" standard) was best explained in Justice O'Connor's concurring opinion in *Wygant*. She explained that to hold a state actor, whose "remedial" racial preference program has been challenged, to a "preponderance of the evidence" standard might discourage States from attempting to eliminate the continuing effects of past unconstitutional racial discrimination -- because any state making such a showing might expose itself to claims from victims of that past discrimination. *Wygant* at 291-92 (O'Connor, J., concurring in part and concurring in the judgment). Thus, a modicum of deference is granted to a state actor's evidence of continuing effects of past discrimination, in order to encourage voluntary race-based remedies where there is strong evidence that such remedies are needed.

That rationale is of no relevance here, where Texas does not claim to be attempting to overcome any continuing

effects of past discrimination.[7] Rather, Texas argues that its new congressional districting scheme is justified by a compelling interest in ensuring that now and in the future it will be in compliance with the Voting Rights Act. Requiring Texas to come forward with evidence to support its claim that it had no choice under the Voting Rights Act but to draw district lines as it did will not expose Texas to new liability claims, since past racial discrimination by Texas is irrelevant to whether the *new* district lines comply with the Voting Rights Act.

More importantly, the district court did not base its decision on a finding that Texas had failed to demonstrate a compelling interest in compliance with the Voting Rights Act. Rather, the court held that CDs 18, 29, and 30 were not narrowly tailored to achieving that compelling interest. *Croson* and *Wygant* did not apply the "strong basis in evidence" standard to the narrowly tailored test -- because requiring a state actor to introduce evidence that its remedial program is narrowly tailored does not expose the state actor to new liability. Rather, *Croson* required state actors to meet their evidentiary burden on the "narrowly tailored" issue by a preponderance of the evidence. *Croson*, 488 U.S. at 507.

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[7] The United States raises an alternative argument that Texas, apart from its interest in complying with the Voting Rights Act, has a compelling interest in eradicating particular instances of racial inequality. Brief for the United States at 32-35. We note merely that the district court declined to consider this argument because "no evidence was presented at trial to support this basis for minority districts." J.S. App. 71a. Inasmuch as this argument was not developed below, the Court should decline to consider it on appeal.

Contrary to the United States' assertion (Brief for the United States at 23), *Miller* did not incorporate the "strong basis in evidence" standard into racial gerrymandering causes of action. *Miller* never addressed the issue. *Miller*'s only mention of that standard came in response to Georgia's argument that it had no choice but to engage in racial gerrymandering in order to obtain § 5 preclearance from the Justice Department. The Court stated:

> We do not accept the contention that the State has a compelling interest in complying with whatever preclearance mandates the Justice Department issues. When a state governmental entity seeks to justify race-based remedies to cure the effects of past discrimination, we do not accept the government's mere assertion that the remedial action is required. Rather, we insist on a strong basis in evidence of the harm being remedied. [Citations omitted.] "The history of racial classifications in this country suggests that blind judicial deference to legislative or executive pronouncements of necessity has no place in equal protection analysis." *Croson, supra,* at 501.

Miller, 115 S. Ct. at 2491. Thus, the Court cited the "strong basis in evidence" standard merely as an example of its unwillingness in past cases to defer to governmental assertions that race-based remedial action is required, not for the purpose of adopting that standard in racial gerrymandering cases.

Indeed, *Miller* explicitly left open the question whether "compliance with the Voting Rights Act, standing alone, can provide a compelling interest independent of any interest in remedying past discrimination." *Id.* at 2490-91. In light of the Court's unwillingness to decide that issue,

the United States is surely wrong in citing *Miller* for the proposition that a State survives strict scrutiny in a racial gerrymandering case by demonstrating "a strong basis in evidence" that its districting scheme was required under the Voting Rights Act.[8]

In sum, there can be no justification for permitting a state to make whatever a "strict scrutiny" evidentiary showing entails based on anything less than a preponderance of the evidence.

B. Appellants Have Failed to Demonstrate any Compelling Interest in Taking Remedial Action

Appellants contend that the existence of the Voting Rights Act provided Texas with a compelling interest in drawing CDs 18, 29, and 30 along racial lines. That argument is without merit.

Section 5 of the Voting Rights Act certainly did not *compel* Texas to draw CDs 18, 29, and 30 as it did. As the Court established in *Beer v. United States*, "the purpose of § 5 [of the Voting Rights Act] has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer v. United States*, 425 U.S. 130, 141 (1976). In other words, § 5 prohibits implementation of a new districting scheme only if the scheme would

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[8] Incredibly, the United States later transforms the "strong basis in evidence" standard to an even less stringent "reasonable basis to believe" standard. Brief for the United States at 23-25. There is simply no good-faith basis for asserting that *Miller* endorses anything even remotely akin to a "reasonable basis to believe" standard.

decrease existing levels of minority voting power. Because there was no Hispanic-majority district in Houston and no black-majority district in Dallas prior to 1991, the failure to create such districts in 1991 would not have violated § 5 -- and thus the decision to create those districts (CDs 29 and 30) cannot be said to have been compelled by § 5. Nor can creation of CD 18 as a majority-black district be justified as necessary to comply with § 5 when, prior to 1991, CD 18 was only 35.1% black.

Nor was Texas's conduct compelled by § 2 of the Voting Rights Act. To establish that a districting scheme violates § 2 by diluting the voting strength of a minority group, a plaintiff must establish three threshold conditions:

> First, "that [the minority group] is sufficiently large and geographically compact to constitute a majority in a single-member district"; second, "that it is politically cohesive"; and third, "that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *[Thornburg v.] Gingles*, 478 U.S. [30], 50-51 [(1986)].

Growe, 113 S. Ct. at 1084.

Had Texas failed to create the three majority-minority districts at issue in this case, it is doubtful that a § 2 plaintiff could have established the first *Gingles* precondition (geographical compactness) in the Houston area. Indeed, even the United States doubts the ability of such a plaintiff to demonstrate that *both* a geographically compact black-majority district *and* a geographically compact Hispanic-majority district could be drawn in the Houston area. Brief for the United States at 28.

Be that as it may, such a plaintiff clearly would not be able to establish the third *Gingles* precondition (white bloc voting enables whites usually to defeat the minority's preferred candidate). The absence of that precondition is most obvious in Houston. Indeed, Texas concedes that blacks and Hispanics in Houston had entered into political coalitions beginning at least in the 1960s that had permitted them to wield considerable political influence. Texas Brief on the Merits at 30. Blacks and Hispanics have joined forces to elect an African-American candidate in CD 18 in every election since 1970. Accordingly, there is simply no basis for contending that white bloc voting in Houston has shut racial minorities out of the political process.

While Appellants complain that the black/Hispanic coalition has begun to break down in recent years, any resulting decrease in black and/or Hispanic political influence could hardly be blamed on white bloc voting when it is within the power of minority groups to re-establish their political influence by re-establishing multi-ethnic coalitions. As the Court made clear in *De Grandy*, "[M]inority voters are not immune from the obligation to pull, haul, and trade to find common political ground." *De Grandy*, 114 S. Ct. at 2661. In any event, there is no evidence that either African-Americans or Hispanics have been shut out of the political process in Houston in recent years. Indeed, a federal district court in Houston recently found Anglos in Houston do *not* routinely vote as a bloc to defeat Hispanic candidates, and that Hispanics routinely have been represented on the Houston City Council in numbers in excess of their percentage of the city's voting-age citizens. *Campos v. City of Houston*, ___ F. Supp. ___, 1995 WL 478151 (July 31, 1995).

Nor is there strong evidence that blacks have been shut out of the political process in Dallas. Indeed, the Fifth Circuit found in *League of United Latin American Citizens v. Clements*, 999 F.2d 831, 877 (5th Cir. 1993), that minority-preferred judicial candidates in Dallas County are *not* defeated by racial bloc voting.

In sum, Appellants have failed to demonstrate that Texas was forced to engage in racially motivated districting in order to comply with § 2 of the Voting Rights Act.

III. TEXAS'S REDISTRICTING PLAN WAS NOT NARROWLY TAILORED TO FURTHERING ITS INTEREST IN VOTING RIGHTS ACT COMPLIANCE

The Texas redistricting plan must fall for the additional reason that it is not narrowly tailored to serving any compelling interest. Even assuming that the Voting Rights Act could be said to provide Texas with a compelling interest in creating CDs 18, 29, and 30 as minority opportunity districts, those districts as drawn cannot qualify as "narrowly tailored" because of their extremely uncouth shapes.

Appellant United States faults the district court for finding that a election district is not narrowly tailored if it is not compact. The United States argues that once it is shown that the three *Gingles* pre-conditions have been met (including a finding that geographically compacts majority-minority district *could* have been drawn), then a State is not required "to enact a plan that incorporates the geographically compact districts that led it to conclude that Section 2 required it to create minority opportunity districts in the first place." Brief for the United States at 31.

Appellees brief explains ably and at length why the United States' argument is incorrect, and thus *amici* will not repeat that explanation here. Suffice to say that any racially-motivated districting plan can only be justified to the extent that it remedies some wrong -- such as a minority population whose voting rights are being abridged in violation of § 2 as a result of racial block voting. If, as happened here, Texas perceives a § 2 violation among one group of minority voters and then creates a racially gerrymandered majority-minority district among another group of minority voters, then that district cannot qualify as "narrowly tailored" to remedying the violation -- because the district is not a remedy at all. The injury to the minority voters whose § 2 rights were being violated is in no sense ameliorated simply because other minority voters suddenly receive enhanced voter power.

The lack of narrow tailoring in the Texas districting plan is particularly evident in Dallas. If a black plaintiff living in the central-city black community in Dallas could establish a § 2 violation, then a narrowly tailored remedy would entail creating a black opportunity district that encompassed the central-city black community. But CD 30 was not drawn so as to encompass that community. Instead, for a variety of racial and nonracial reasons, significant chunks of that community were left out of CD 30, and CD 30 reached its pre-ordained quota of 50% black residents by extending tentacles to distant African-American neighborhoods far removed from the central city. Thus, while a narrowly tailored minority opportunity district undoubtedly could be drawn in Dallas, CD 30 is not that district.

Finally, *amici* wish to emphasize that the district court's ruling does not preclude the creation of minority

opportunity districts in Dallas and Houston. We would venture to guess that it would be quite difficult to draw a set of compact Texas congressional districts that did not include at least one minority opportunity district in Houston. The Equal Protection Clause provides no impediment whatsoever to taking race into account as one factor among many in drawing up election districts -- so long as it does not become the predominant factor. In light of the broad latitude that *Miller* provides to States in that regard, we would not be at all surprised if blacks ended up with considerable political influence over one of the Dallas districts. What *amici* do find objectionable is the deliberate racial segregation of voters into "separate but equal" voting districts -- such districting practices are antithetical to the Equal Protection Clause and will inevitable lead to a deterioration of racial relations.

CONCLUSION

Amici curiae Washington Legal Foundation, the Center for Equal Opportunity, and the Allied Educational Foundation respectfully request that the Court affirm the decision of the lower court.

Respectfully submitted,

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Dated: October 13, 1995

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No. 94-805, 94-806, and 94-988

In the
Supreme Court of the United States
October Term, 1995

GEORGE W. BUSH, Governor of Texas, et al.,
Appellant-Applicants,
v.
AL VERA, et al.,
Appellee-Respondents.
REV. WILLIAM LAWSON, et al., and ROBERT REYES, et al.,
Appellants,
v.
AL VERA, et al.,
Appellees
UNITED STATES OF AMERICA
Appellants,
v.
AL VERA, *et al.*
Appellees.

On Appeal from the United States District Court
for the Southern District of Texas

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF APPELLEES, AL VERA, ET AL.

IDENTITY AND INTEREST OF AMICUS CURIAE

Pursuant to Supreme Court Rule 37, Pacific Legal Foundation (PLF) respectfully submits this brief amicus curiae in support of appellees, Al Vera, *et al.* All parties

have consented to the filing of this brief. The letters of consent have been lodged with the Clerk of this Court.

Pacific Legal Foundation is a nonprofit, tax-exempt corporation organized under the laws of the State of California for the purpose of engaging in litigation in matters affecting the public interest. Policy is set by a Board of Trustees composed of concerned citizens, the majority of whom are attorneys. PLF's Board evaluates the merits of any contemplated legal action and authorizes such legal action only where the Foundation's position has broad support within the general community. PLF's Board has authorized the filing of an amicus curiae brief in this matter.

Pacific Legal Foundation is submitting this brief because it believes its public policy perspective and litigation experience in the voting rights arena will provide an additional viewpoint with respect to the issues presented. PLF attorneys have participated in numerous other cases in the voting rights context before this Court including *Shaw v. Hunt*, Supreme Court Docket Nos. 94-923, 94-924; *Hays v. Louisiana*, 515 U.S. ___, 132 L. Ed. 2d 635 (1995); *Chisom v. Roemer*, 501 U.S. 380 (1991); and *League of United Latin American Citizens v. Attorney General of Texas*, 501 U.S. 419 (1991).

PLF believes that racial classifications by government, both in the voting rights context and otherwise, should be inherently suspect and, absent extraordinary circumstances, unconstitutional. This standard is particularly applicable when congressional districts are gerrymandered on the basis of race. PLF further believes that "incumbency protection," far from being a compelling interest to justify racial gerrymandering, is actually destructive of American democracy.

OPINION BELOW

The opinion of the three-judge District Court finding three of Texas' congressional districts to be unconstitutional as a violation of the Equal Protection Clause is reported at *Vera v. Richards*, 861 F. Supp. 1304 (S.D. Tex. 1994).

STATEMENT OF THE CASE

After the 1990 census, the State of Texas redrew its congressional districts. *See* Tex. Const. Art. III, § 26. The boundaries were drawn with knowledge of the ethnicity of every voter in the state and were drawn to channel individuals of like ethnicity into particular districts by reason of that immutable trait. *Vera v. Richards*, 861 F. Supp. at 1309. The Attorney General of the United States precleared the redistricting plan under Section 5 of the Voting Rights Act but expressed reservations as to its constitutionality. *Id.* Six Texas voters, residing in Congressional Districts 18, 25, 29, and 30, challenged 24 of the state's 30 districts as racially gerrymandered. *Id.*

The District Court struck down Districts 18, 29, and 30 as racially gerrymandered, holding that when the state redraws those districts, it "can and must exhibit respect for neighborhoods, communities, and political subdivision lines." *Id.* at 1310. The other districts were upheld because they were "disfigured less to favor or disadvantage one race or ethnic group than to promote the reelection of incumbents." *Id.* at 1309.

SUMMARY OF ARGUMENT

Racial classifications, inherently problematic, violate the Fourteenth Amendment of the United States Constitution unless they are narrowly tailored to further a compelling governmental interest. Racial classifications tied to suffrage

are not excepted from this standard. To the contrary, where both a suspect classification and a fundamental right are involved this strict scrutiny standard is most important. The court below correctly subjected the boundary lines of Texas Congressional Districts 18, 29, and 30 to strict scrutiny and found them lacking.

Historically, American political thought emphasized equality of opportunity, "moral equality," over equality of results, "numerical equality." From the founding of our Nation through the Civil War to the enactment of the landmark civil rights legislation in the 1960s, both government and citizen activists agreed that moral equality was the basis for a strong, nondiscriminatory republic. For the past 25 years, however, numerical equality has superseded moral equality as the foundation for governmental decisionmaking. This ascendance of numerical equality is contrary to the premises on which America achieved its distinctive greatness.

Moreover, while most jurisdictions go to great lengths to hide the partisan nature of their districting, Texas proclaims it proudly. When a legislature seeks to guaranty incumbency, whether through racial or other classification, the goal of representative government is defeated. In the American political tradition, the intent to gain power by some method other than appealing to voters is just plain wrong. When such gerrymandering has the effect of segregating Americans by race, it violates the Constitution.

ARGUMENT

I

RACIAL GERRYMANDERING IS NEVER CONSTITUTIONAL

Texas' "Congressional Districts 18, 29, and 30 were created for the purpose of enhancing the opportunity of minority voters to elect minority representatives to Congress." *Vera*, 861 F. Supp. at 1337. Whatever may be the justification for racial classifications in other situations (*e.g.*, remedial mechanisms in contracting and employment), the Fourteenth Amendment forbids government institutions from redistricting based on race and ethnicity. Despite its insistence that the lines were drawn to protect incumbents by divvying up Democrats (see *infra* at 16-26), the fact of Texas' reliance on race as the sole defining characteristic related to party membership is established by the use of the computer which drew the district lines: no other socio-economic census data existed on the computer or was made available to the Legislature. *Vera*, 861 F. Supp. at 1336. To put it in the familiar nomenclature of the Court, racial gerrymandering can never survive strict scrutiny because there is no compelling justification for redistricting on racial lines.

The Fourteenth Amendment to our Constitution embodies the fundamental principle of "moral equality." Moral equality requires that government and society consider every person as an individual, not as a fungible member of some racial or ethnic group. Moral equality forbids government from handicapping individuals for arbitrary or discriminatory reasons. It has been alternatively described as "equality of opportunity," especially when contrasted with numerical equality, or "equality of results." T. Eastland and W. Bennett, *Counting by Race: Equality from the Founding Fathers to Bakke and Weber* 9-10 (Basic Books, Inc., N.Y., 1979) (Eastland); *see also* T. Sowell, *A Conflict of Visions:*

Ideological Origins of Political Struggles 121-40 (William Morrow & Co., N.Y., 1987).

America was founded on the basis of moral equality, as it is so eloquently phrased in the Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness." The institution of slavery existed at the time of the Declaration and was hopelessly inconsistent with it. For nearly a century, this incompatibility provoked bitter political debate, culminating with Abraham Lincoln declaring an end to slavery in 1863 and the triumph of the Union in 1865. The Fourteenth Amendment enshrined the victorious concept of moral equality after the Civil War and this concept was still the norm through the enactment of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. Only within the last 25 years has devotion to numerical equality threatened to subsume moral equality as the basis for American politics.

A. Historical Basis for Moral Equality

Moral equality was central to the philosophical principles which inspired the founding of the American republic. In John Locke's Second Treatise, the philosopher argued that "all men are naturally in ... a state of perfect freedom to order their actions and dispose of their possessions and persons as they think fit, within the bounds of the law of nature, without asking leave or depending upon the will of any other man." J. Locke, *Two Treatises of Government* 121 (T. Cook ed., 1947), *cited in* H. Jaffa, *How to Think About the American Revolution: A Bicentennial Celebration* 40 (Durham, N.C., 1978) (Jaffa). This concept of natural freedom and equality provided that the just powers of government in the American political tradition could only be derived from the consent of the governed. Because the right of consent is itself derived from the equality of all

humans, consent is limited--one may not consent to that which denies the premise of equality. Jaffa at 40-42; *see also The Federalist No. 51* (J. Madison) (Rossiter ed., 1961) at 322. A government of men over men, rather than of angels over men, or of men over beasts, presumes the moral equality of the men who govern, not only among themselves but also with the governed. Thus, the very nature of the problem that the Constitution was written to resolve is determined by the meaning of equality. Jaffa at 42.

British political scientist Joel Barlow wrote in 1792 that the American notion of moral equality precipitated the Revolution and sustained American freedom. In the United States, the word "people" meant the whole community and comprehended every human being in the society. There were only "individuals" in America; there could be nothing else--no feudal system, no lords, no monarchs. Rather, Americans revered only those distinctions which nature created--a diversity of talents, abilities, and virtues. J. Barlow, *Advice to the Privileged Orders in the Several States of Europe Resulting from the Necessity and Propriety of a General Revolution in the Principles of Government* 17 (Ithaca, N.Y., 1956, first published London, 1792), *cited in* G. Wood, *Creation of the American Republic, 1776-1789* 607 (University of North Carolina Press, 1969). The obvious conflict between moral equality and the institution of slavery was not fully resolved in American political and legal thought until Abraham Lincoln began the process of ending slavery in America with the Emancipation Proclamation on January 1, 1863 (*reprinted in* H. Commager, *Documents of American History*, Vol. 1, 420-21 (9th ed. 1973) (Commager)), and the states ratified the Thirteenth Amendment to the United States Constitution on December 6, 1865, forever outlawing that despicable practice.

Lincoln's importance to the development of the concept of moral equality cannot be underestimated. To him,

the principle of equality was logically necessary to the idea of self-government. *Lincoln's First Inaugural Address* (March 4, 1861), *reprinted in* Commager at 386-88. Self-government, by definition, requires the assumption that all humans possess free will and that all are morally autonomous. In this sense, all individuals are created equal and for one person to deal with another, because of race, in ways that deny or diminish the other's intrinsic worth as a moral agent is to deny the very basis upon which self-government is possible. Eastland at 55-56.

In his message to Congress on July 4, 1861, Lincoln defined the cause of the Union as the preservation of "that form, and substance of government, whose leading object is, to elevate men--to lift artificial weights from all shoulders--to clear the paths of laudable pursuit for all--to afford all, an unfettered start, and a fair chance, in the race of life." 4 *The Collected Works of Abraham Lincoln* 438 (R. Basler ed., 1953), *cited in* Jaffa at 34. Thus, republican government, in Lincoln's view, necessitated the elimination of slavery because it was incompatible with the principle of moral equality. Lincoln believed that this principle was higher than any other: It defined republican government. Eastland at 47.

The passage of the Civil War Amendments in 1865-1870 highlighted the primacy of moral equality. These Amendments spoke only of individuals, not groups:

> [E]quality is an individual attribute that had no connection with class or race; the [Fourteenth] [A]mendment extended the same rights to all--there could be no need to mention race or colour. ... Equality could not be divided into sections as happened to suit the demands of one or another class or interest group at any particular time.

Pole at 180-81. This moral equality of the individual, espoused by President Lincoln, led to the judicial concept of a color-blind Constitution:

> [I]n view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved.

Plessy v. Ferguson, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting). Sadly, the moral equality and constitutional protection of the individual under a color-blind Constitution was corrupted by the doctrine of "separate but equal," an invidious concept that haunted America for more than a half-century.

On May 17, 1954, the Court once and for all declared "that all men are created equal," and that our Constitution would stand for nothing less. "Separate" is "inherently unequal." *Brown v. Board of Education*, 347 U.S. 483, 495 (1954). The Court's opinion would provide the legal foundation for Dr. Martin Luther King's "dream"--that his children would "live in a nation where they will not be judged by the color of their skin but by the content of their character." A. Kull, *A Color Blind Constitution* 166 (Harvard University Press, 1992). Moral equality, fundamental democratic principles, and the Constitution were restored as the supreme law of the land.

How, then, have states been not only allowed but *required* to segregate congressional districts? Some general

observations can be accurately made: The pursuit of numerical, rather than moral, equality unfortunately has been embraced by virtually all institutions of government and some public opinion. *See* A. Bickel, THE MORALITY OF CONSENT 133 (Yale Univ. Press 1975). The most disturbing aspect of this shift in political thought is the disavowal of individual rights in favor of a collective group rights concept of equality. All blacks are held to be victims of discrimination and hence entitled to compensation. All whites are held to have benefited unjustly from the system of racial discrimination and are guilty. These assumptions stand in fundamental opposition to the universal principle of individual rights that has been the moral and intellectual foundation of the American republic.[1] *See* H. Belz, *Equal Protection and Affirmative Action, The Bill of Rights in Modern America* 173 (Bodenhamer & Ely, eds., Indiana University Press, 1993) (Belz).

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[1] The Court's constant recognition of fundamental rights as individual rights is so oft-stated that only a few examples will suffice to make the point here. In *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris*, 463 U.S. 1073, 1083 (1983), this Court explicitly held that the Constitution must treat citizens as *individuals*, not "'as simply components of a racial, religious, sexual, or national class.'" Moreover, in *Griswold v. Connecticut*, 381 U.S. 479 (1965), *Eisenstadt v. Baird*, 405 U.S. 438 (1972), and *Roe v. Wade*, 410 U.S. 113 (1973), the Court identified in the Due Process Clause of the Fourteenth Amendment a fundamental *individual* right to decide whether or not to beget or bear a child. *Carey v. Population Services International*, 431 U.S. 678, 688-89 (1977).

B. Racial Gerrymandering Violates the Holding of Brown v. Board of Education and the Concept of Moral Equality

By allowing states to racially gerrymander their electoral districts, the despicable doctrine of "separate but equal," under the guise of "separate but better off," *Wright v. Rockefeller*, 376 U.S. 52, 62 (1964) (Douglas, J., dissenting), or "separate but proportional," Belz at 162, is restored under the sanction of law. In 1964, Justice Douglas asserted that there could be no legal distinction between segregation in voting and segregation elsewhere.

> I had assumed that since *Brown v. Board of Education* ... no State may segregate people by race *in the public areas*. The design of voting districts involves one important *public area*--as important as schools, parks, and courtrooms. We should uproot all vestiges of *Plessy v. Ferguson* ... from *the public area*.
>
> ... "Separate but equal" and "separate but better off" have no more place in voting districts than they have in schools, parks, railroad terminals, or any other facility serving the public.

Wright, 376 U.S. at 62, 67 (Douglas, J., dissenting) (internal citations omitted; emphasis in original); *see also Miller v. Johnson*, 515 U.S. ___, 132 L. Ed. 2d 762, 776 (1995). To allow states to be anything but race-neutral in the drawing of electoral districts is to deny moral equality and repudiate *Brown*.

First, racial segregation in redistricting is a per se violation of the Fourteenth and Fifteenth Amendments to the Constitution. The Fifteenth Amendment is an "exemption from discrimination in the exercise of the elective franchise on account of race, color or previous condition of servitude."

United States v. Reese, 92 U.S. 214, 218 (1876). There are no codicils or clauses in this Amendment with respect to a particular race--it is wholly color-blind and forbids *all* discrimination in voting, not merely discrimination that social engineers anoint as "invidious." Similarly, the Fourteenth Amendment forbids racial discrimination in regards to democratic elections: "Its central mandate is racial neutrality in governmental decisionmaking." *Miller*, 132 L. Ed. 2d at 771. In *Wright*, Justice Goldberg faithfully united the moral equality of *Brown*, the Fourteenth Amendment, and the harm of racial gerrymandering: "Given this settled principle that state-sanctioned racial segregation is unconstitutional per se," he wrote, "the Court's decisions since Brown v Board of Education [have held] that harm to the Nation as a whole and to whites and Negroes alike inheres in segregation. The Fourteenth Amendment commands equality, and racial segregation by law is inequality." *Wright*, 376 U.S. at 69 (Goldberg, J., dissenting). Although racial discrimination unrelated to elections (*i.e.*, "affirmative action" in limited, remedial circumstances) has been allowed by this Court to stand in the past, "[o]ur Constitution has a special thrust when it comes to voting," as emphasized by the Fifteenth Amendment. *Whitcomb v. Chavis*, 403 U.S. 124, 180 (1971) (Douglas, J., dissenting in part and concurring in part). Racial gerrymandering cannot be justified in light of the dictates of the Fourteenth and Fifteenth Amendments and the moral equality of *Brown*.

Second, segregating individuals by skin color into racial districts is little better than racial apartheid or caste systems: "A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid." *Shaw v. Reno*, 509 U.S. ___, 125 L. Ed. 2d 511, 529 (1993); *see also Holder v.*

Hall, 512 U.S. ___, 129 L. Ed. 2d 687, 710-11 (1994) (Thomas, J., concurring in the judgment). The analogy to apartheid and caste systems is not novel: Three decades ago Justice Douglas argued that redistricting by racial segregation "is comparable to the Electoral Register System which Britain introduced into India." *Wright*, 376 U.S. at 63 (Douglas, J., dissenting). In that political caste system, "'[n]o one who is not a Sikh, a Muhammadan, Anglo Indian, European or an Indian Christian, is entitled to be included in a Sikh, Muhammadan, Anglo Indian, European or an Indian Christian constituency respectively.'" *Id.* at 63 n.5. This system was allegedly justifiable because, *inter alia*, "Muslims are a distinct community with additional interests of their own, which are not shared by other communities." *Id.* at 63. This sounds remarkably similar to the current justification for racial gerrymandering in America. A caste system might allow racial clans to be organized into a tribal federation, but it can never result in an indivisible nation of independent and free-thinking men and women. A. Thernstrom, WHOSE VOTES COUNT? 132 (Harvard Univ. Press 1987).

But "[t]here is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens." *Plessy*, 163 U.S. at 559 (Harlan, J., dissenting). By permitting racial segregation in redistricting, we "reinforce and preserve for future mischief the way of thinking that produced race slavery, race privilege and race hatred. In the eyes of government, we are just one race here. It is American." *Adarand Constructors, Inc. v. Pena*, 515 U.S. ___, 132 L. Ed. 2d 158, 190 (1995) (Scalia, J., concurring in part and concurring in the judgment); *United Jewish Organizations of Williamsburgh, Inc. v. Carey*, 430 U.S. 144, 187 (1977) (Burger, C.J., dissenting) (noting the retreat from the ideal of the American "melting pot"). In fact, Houston, Texas, home of challenged districts 18 and 29, has proven to be almost a model of integration. "African-American and Hispanic populations inhabit large

portions of Harris County in a checkerboard pattern with each other and with white citizens." *Vera*, 861 F. Supp. at 1339. Thus citizens of varying ethnicity in Houston live and work together just as the civil rights activists in the 1960s argued was the goal of the movement.

If integration is legally set back by dividing such integrated communities into racially gerrymandered voting districts, the cost of allowing political apartheid in our system of representative government is not academic or idle:

> There is much reason to fear the harm that it is currently doing to its supposed beneficiaries, and still more reason to fear the long-run consequences of polarizing the nation. Resentments do not accumulate indefinitely without consequences. Already there are signs of hate organizations growing in parts of the country and among more educated social classes than ever took them seriously before. As a distinguished writer has said in a different context: "It takes a match to start a fire but the match alone is not enough." Many racial policies continually add to the pile of combustible material, which only needs the right political arsonist to set it off.

T. Sowell, *Civil Rights: Rhetoric or Reality*? 117-18 (1984) (Sowell) (emphasis omitted). In light of the "ethnic cleansing" occurring in Bosnia, Rwanda, and elsewhere, and America's own tragic history of race hate, race subjugation, and race slavery, the Court should be particularly wary of acquiescing to separatist policies and disregarding the tragic potential of political segregation by saying "it could never happen here."

Finally, there is no legal justification for racial segregation in the Texas redistricting, *i.e.*, there is no

compelling state interest that would allow this racial classification to survive strict scrutiny. The only possible remedy when a governmental entity racially gerrymanders is to replace it with a race-neutral districting scheme. *United Jewish Organizations*, 430 U.S. at 186 (Burger, C.J., dissenting) (internal citation omitted). Only one governmental interest can maintain racial classifications under strict scrutiny: remedying the present effects of identified past illegal discrimination by a particular government entity. *See Adarand v. Pena*, 132 L. Ed. 2d at 188; *Wygant v. Jackson Board of Education*, 476 U.S. 267, 274-77 (1986); *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 524 (1989) (Scalia, J., concurring in the judgment). This "remedy rationale" might be appropriate in the context of governmental hiring and contracting: A minority *individual* may have been denied the opportunity to compete for government employment or contracts because of his or her race and, by giving that *individual* a preference in the hiring/contracting process, an employer compensates that *individual* for a past opportunity denied.

This rationale, however, cannot square with the conditions of voting and redistricting. There are no residual losses from "bad" elections and redistricting schemes of the past: Each time a governmental entity redistricts its jurisdiction, the slate is cleaned. The fact that a previous group of legislators invidiously gerrymandered by race after a previous census has absolutely nothing to do with the present redistricting process--either the new plan is race-neutral and must be deferred to, or it segregates individuals by race and must be struck down as unconstitutional. There simply is no grey area in redistricting. By creating "majority-minority districts," or "minority influence districts," or any other form of "racial borough," "[n]o old injustice is undone, but a new injustice is inflicted." R. Bork, *The Tempting of America* 106 (The Free Press, 1990); *see also* Sowell at 119. The only constitutional

response to racial gerrymandering is to strike it down emphatically and require race-neutral redistricting in its place.

"[G]overnment has no business designing electoral districts along racial or religious lines." *Wright*, 376 U.S. at 66 (Douglas, J., dissenting). Racial gerrymandering, whether "benign" or "invidious," "threatens to carry us further from the goal of a political system in which race no longer matters--a goal that the Fourteenth and Fifteenth Amendments embody, and to which the Nation continues to aspire." *Shaw*, 125 L. Ed. 2d at 535. This Court should affirm the decision below striking down Texas' racial gerrymandering scheme and pronounce that, in the context of legislative redistricting, our Constitution is truly color-blind.

II

INCUMBENCY PROTECTION CANNOT JUSTIFY RACIAL GERRYMANDERING

The state appellants in this case argue vigorously and at length that a state may gerrymander to its heart's content if the primary reason is to assure the reelection of incumbents. State Appellants' Brief on the Merits at 5-19. This cynical view of American democracy should find no footing in this Court. Gerrymandering has been described as a "pathology of democracy." Shapiro, *Gerrymandering, Fairness, and the Supreme Court*, 33 UCLA L. Rev. 227, 239 (1985). Gerrymandering introduces a chronic, self-perpetuating skew into the business of popular representation, no matter how the term is defined. A perversion of democratic procedure, the problem resists correction by democratic means. Polsby and Popper, *The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering*, 9 Yale L. and Pol. Rev. 301, 305 (1991) (*Third Criterion*). This Court has long recognized that

antidemocratic practices can effectively poison democratic institutions and prevent reform. Justice Clark, concurring in *Baker v. Carr*, 369 U.S. 186, 258 (1962), wrote that he would "not consider intervention by this Court into so delicate a field if there were any other relief available to the people of Tennessee" by which they could effect a reapportionment of their legislature. *See also Reynolds v. Sims*, 377 U.S. 533, 570 (1964) (lack of political remedy results in "minority stranglehold on the State Legislature").

The court below recognized that perversion of democracy which gerrymandering engenders: "The final result seems not one in which the people select their representatives, but in which the representatives have selected the people." *Vera*, 861 F. Supp. at 1334. Nonetheless, the court appeared more concerned with the degree of incumbent protection than the use of the concept in general. The court found "legitimate" the "generalized ... goal of incumbent and seniority protection" but balked at "districts ... drawn on a block-by-block or neighborhood- or town-splitting level to corral voters perceived as sympathetic to incumbents or to exclude opponents of the incumbents." *Id.*

A. American Government Is Dependent upon Voters Choosing Representatives, Not Representatives Choosing Voters

Politicians have a personal interest in preserving their incumbencies, and a political interest in perpetuating or expanding their party's political power, so they typically draw district lines in a way that serves these interests. *See generally* B. Cain, THE REAPPORTIONMENT PUZZLE (1984); B. Grofman, POLITICAL GERRYMANDERING AND THE COURTS (1990). Citizens, on the other hand, have a different interest at stake: the election of officials who will represent them effectively, an essential element of a democratic republic.

Gerrymandering violates the American constitutional tradition by conceding to legislatures the power of self-selection. Self-constitutive legislatures make no sense under a Constitution founded on the dispersion of power. Legislatures are legislatures not because *they* say they are, but because a *constitution* says they are. Of course, the Constitution does not specifically forbid gerrymandering, any more than it specifically forbids the excessive, unfair, or abusive exercise of any delegated power, but the democratic ideals embedded in the Constitution certainly forbid legislatures from insulating themselves from the popular will. U.S. Const. Art. I, § 2 ("chosen ... by the People"). The members of a partially self-constituted legislature depend to a degree upon one another rather than upon their constituents for their tenure in office. Whatever "representation" means, it cannot possibly mean that. *Third Criterion* at 304-05. As the court below noted, "the bedrock principle of self-government, the interdependency of representatives and their constituents, is thus undermined by ignoring traditional districting principles." *Vera*, 861 F. Supp. at 1334 n.43.

The Founding Fathers valued the faction-diluting character of representation by place. Rather than representation by wealth, by profession, or any other principle of organization which would define in advance the kinds of interests that would be admitted to the game of politics, the authors of the Constitution deliberately chose geographical representation. They believed this principle possessed a randomizing effect on the make-up of the voting public. *Third Criterion* at 307 n.29. Thus, for example, when Alexander Hamilton argued in the Federalist Papers that the "wealthy and the well-born"--a faction--would not come to dominate the legislature through abuse of the voting process, he asked:

> Are the wealthy and the well-born, as they are called, confined to particular spots in the

> several States? Have they, by some miraculous instinct of foresight, set apart in each of them a common place of residence? Are they only to be met with in the towns or cities? Or are they, on the contrary, scattered over the face of the country as avarice or chance may have happened to cast their own lot or that of their predecessors?

The Federalist No. 60 at 370-71 (A. Hamilton) (Rossiter, ed. 1961). A gerrymander defeats this randomizing effect by picking and choosing the factions which will exist within particular boundaries. James Madison echoed this view, particularly emphasizing the expectation that incumbents will not serve in perpetuity:

> [T]he House of Representatives is so constituted as to support in the members an habitual recollection of their dependence on the people. Before the sentiments impressed on their minds by the mode of their elevation can be effaced by the exercise of power, they will be compelled to anticipate the moment when their power is to cease, when their exercise of it is to be reviewed, and when they must descend to the level from which they were raised; there forever to remain unless a faithful discharge of their trust shall have established their title to a renewal of it.

The Federalist No. 57 at 352 (J. Madison) (Rossiter, ed. 1961).

Judicial tolerance for partisan gerrymandering contradicts the traditional American belief that government "ought to be instituted for the common benefit ... and not for the particular emolument of any single man, family, or set of men." *See, e.g.*, Pa. Const. of 1776, Art. V; Mass. Const. of 1780, Part I, Art. VII ("Government is instituted for the

Common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or Class of men") cited in Williams, *The Courts and Partisan Gerrymandering: Recent Cases on Legislative Reapportionment*, 18 S. Ill. U. L. J. 563, 596 (1994). The founders of our nation believed it was essential "that the members of (the legislature) may be constrained from oppression, by feeling and participating the burdens of the people, they should, at fixed periods, be reduced to a private station, return to that body from which they were originally taken, and the vacancies supplied by frequent, certain, and regular elections." *Id.* (citing Va. Const. of 1776, § 5). As President Andrew Jackson noted in his 1829 Message to Congress, "In a country where offices are created solely for the benefit of the people, no one man has any more intrinsic right to official station than another." *Id.* (citing R. Hofstader, THE AMERICAN POLITICAL TRADITION 64 (1948)).

The interdependence between legislators and constituents is furthered by communication during election campaigns and during the legislator's term of office. A gerrymandered district, which may run for miles in opposite directions, places an undue burden on the communication necessary for a legislator to represent constituents properly. On the other hand, as many states have long known, contiguity and compactness further this goal. By 1918, 25 state constitutions explicitly required that districts be composed of contiguous territory. *See* Williams, 18 S. Ill. U. L. J. at 571-72 (citing C. Kettleborough, THE STATE CONSTITUTIONS (1918)). In the other states this was not required explicitly, but districts were coextensive with existing political subdivisions, obviating the need for such a requirement. *Id.*

Prosser v. Elections Board, 793 F. Supp. 859, 863 (W.D. Wis. 1992), explained the complementary rationale for compactness.

> The objections to bizarre-looking reapportionment maps are not aesthetic .... They are based on a recognition that representative democracy cannot be achieved merely by assuring population equality across districts. To be an effective representative, a legislator must represent a district that has a reasonable homogeneity of needs and interests; otherwise the policies he supports will not represent the preferences of most of his constituents. There is some although of course not a complete correlation between geographical propinquity and community of interests, and therefore compactness and contiguity are desirable features in a redistricting plan. Compactness and contiguity also reduce travel time and costs, and therefore make it easier for candidates for the legislature to campaign for office and once elected to maintain close and continuing contact with the people they represent. Viewing legislators as agents and the electorate as their principal, we can see that compactness and contiguity reduce the "agency costs" of representative democracy.

See also Third Criterion at 339-51 (arguing in favor of a mathematical compactness standard and suggesting several models).

The Illinois Supreme Court's opinion in *Schrage v. State Board of Elections*, 430 N.E.2d 483 (Ill. 1981), demonstrates how the compactness standard serves as a check against gerrymandering. The court noted that compactness has been held to mean "closely united, territorially" and not to "require perfect compactness as in a circle or a square." *Id.* at 486. In other words, districts must be "reasonably

compact" and the courts will give some leeway. *Id.*[2] "We have, after all, a representative form of government. The creation of a representative district which is extremely elongated and not 'closely united' significantly impedes vital constituent-representative communication, thus preventing the achievement of a legislative process which is, in fact, representative." *Id.* at 488-89. Contrast this vision of compactness with Texas Congressional Districts 18 and 29 (Houston), which required an increase in the number of precincts from 672 to 1,225 to accommodate voters within the convoluted boundaries. "Polling places, ballot forms, and the number of election employees correspondingly multiplied." Voters were "thrust into new and unfamiliar precinct alignments, a few with populations as low as 20 voters." *Vera*, 861 F. Supp. at 1325.

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[2] At one time nearly every state's constitution provided for the election of legislators on a county-by-county basis, with a few in New England electing legislators from towns. *E.g.*, Ariz. Const. of 1912, Art. IV, Pt. 2, § 1 (amended 1982); Conn. Const. of 1818, Art. III, § 3 (amended 1965). See also La. Const. of 1913, Art. XVIII (providing that districts would consist of parishes or wards of the City of New Orleans). Later, most constitutions had provisions similar to one found in Colorado's 1876 constitution, which provided that "[n]o county shall be divided in the formation of a senatorial or representative district." Colo. Const. of 1876, Art. V, § 47. A few states also provided that towns, N.Y. Const. of 1938, Art. III, § 5 (amended 1991); boroughs; Pa. Const. of 1873, Art. II, § 16 (amended 1969); city wards, Pa. Const. of 1838, Art. I, § 7; precincts, Wis. Const. of 1848, Art. IV, § 4; or even city blocks, N.Y. Const. of 1894, Art. III, § 4 (amended 1991); could not be divided between districts. *See* Williams, 18 S. Ill. U. L.J. at 570.

B. The Law Does Not Support Blatant Incumbency Protection as a Legitimate Reason for Districting by Race

The majority in *Shaw v. Reno*, 125 L. Ed. 2d 511, appropriately did not base the constitutionality of racially gerrymandered districts on cases like *Washington v. Davis*, 426 U.S. 229, 239 (1976), and *Village of Arlington Heights v. Metropolitan House Development Corp.*, 429 U.S. 252, 264-65 (1977), in which this Court held that an otherwise legitimate state action that clearly has a disproportionate impact on minorities violates the Equal Protection Clause only if the legislative body undertook the challenged action for a discriminatory purpose. The *Shaw* dissenters quite correctly note that both a disproportionate impact and a discriminatory purpose are essential to such cases. *Shaw*, 125 L. Ed. 2d at 537. *Washington v. Davis* and its progeny involved challenges to legislative action that served clearly legitimate governmental interests and thus would have been unquestioned but for its impact on minorities. In *Washington*, black plaintiffs challenged the jurisdiction's use of test scores to make hiring decisions, a legitimate procedure, assuming that the test was relevant to job qualifications. In *Mobile v. Bolden*, 446 U.S. 55 (1980), the challenge was to at-large elections, at the time the most common method of electing local governments in the nation. *Id.* at 60-67.

The decision challenged in *Shaw* was of a different order. Drawing districts down interstate highways is not an otherwise legitimate action that just happens to have a racial impact. North Carolina drew the challenged district solely to have a racial impact. *Shaw*, 125 L. Ed. 2d at 521. *Shaw*'s detractors argue that creating bizarre districts is otherwise legitimate because compactness is not a requirement of state or federal law. They note that such districts are not per se unconstitutional and most states,

including North Carolina, do not require that districts be geographically compact. Like Texas in this case, gerrymanderers argue that bizarre districts are routinely created for other questionable purposes, such as protection of incumbents.

The citizens of North Carolina who set in motion the challenge that resulted in this Court's decision in *Shaw v. Reno* would surely have questioned the legitimacy of a congressional district drawn down an interstate highway, regardless of its alleged purpose. In the context of a voting district, "otherwise legitimate" must mean that it serves some recognized representational purpose other than lumping people together by race. Butler, *Affirmative Racial Gerrymandering: Fair Representation For Minorities or a Dangerous Recognition of Group Rights?* 26 RUTGERS L.J. 595, 603 (1995). That citizens are grouped by race for the purpose of "incumbent protection" rather than a "racial purpose" does not alter the analysis. Distinctions are still being made on the basis of race and need to be supported by a compelling interest.

The term "neutral principles," as used in constitutional jurisprudence, refers to value judgments having a source such as the text of the constitution, history and tradition, or "original intent," as opposed to the individual preferences of judges. *See generally* R. Bork, *Neutral Principles and Some First Amendment Problems*, 47 IND. L. J. 1 (1971). These are a source of judicial restraint and a check on judicial activism. In the redistricting sphere, "neutral principles" must be defined criteria for redistricting having sources other than legislators' individual preferences because those preferences are inherently suspect. The suspicion lies in the personal pecuniary and political interests of legislators who carry out the redistricting activity. While even the use of neutral criteria cannot be expected to result in completely "neutral redistricting"—maps which are completely devoid of bias in favor of one party—because any

given district's boundaries will almost inevitably favor one party, neutral principles ensure that such bias will only occur naturally, because of the distribution of people within a certain geographic area. Williams, 18 S. Ill. U. L.J. at 569-70.

This theme was expounded upon in *Ann Arundel County Republican Central Committee v. State Administrative Board of Elections Laws*, 781 F. Supp. 394 (D.Md. 1991), in which dissenting Judge Niemeyer concluded that the Maryland congressional map violated Article 1, Section 2, of the United States Constitution, which directs that the "House of Representatives shall be composed of Members chosen ... by the People of the several States." *Id.* at 403. Niemeyer reasoned that, because House members were to be chosen by "the People," in contrast to senators chosen by state legislators, any tinkering by a legislature intended to impose its preferences on congressional elections must be unconstitutional. *Id.* at 403-08. Niemeyer also noted that language from early United States Supreme Court decisions on gerrymandering "require[d] that representation of the people be direct and equal" (referring to *Wesberry v. Sanders*, 376 U.S. 1 (1964), *quoted in Ann Arundel*, 781 F. Supp. at 402). From this, he inferred that a legislature "must rely on available neutral criteria" when engaged in redistricting. 781 F. Supp. at 407.

Judge Niemeyer's dissent recounted the tawdry political maneuvering by incumbent congressmen to influence Maryland legislators to save their districts. *Id.* at 408-09. Niemeyer concluded that

> the driving force behind the placement of the new district boundaries was a desire to promote the election bids of certain incumbent representatives at the expense of other, less senior incumbents. The Constitution gives to the voters of Maryland a right to make their own choices about reelecting their present

> Congressmen.... The State's attempts to defeat that right by manipulating district lines, either by unnecessarily pitting incumbents against one another or by enhancing the prospects of one candidate over another, cannot be reconciled with Article I, § 2, and *Wesberry*.

Id. at 409-10.

The Court recently ruled that the popular tool of term limits cannot be employed by the voters to contradict the manipulation of the electoral process by incumbents to favor their own reelection to the Congress. *U. S. Term Limits, Inc. v. Thorton*, 514 U.S. ___, 131 L. Ed. 2d 881, 921 (1995). In this case, the Court should address the other side of that issue and rule that the reelection of incumbents is not a legitimate state interest to justify the manipulation of congressional district lines.

CONCLUSION

"The destinies of the two races in this country are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law." *Plessy*, 163 U.S. at 560-61 (Harlan, J., dissenting). Justice Harlan's words, founded on the Fourteenth Amendment and given legal credence by *Brown v. Board of Education*, required the end of segregation in buses, in schools, and in districting. Moreover, racial gerrymandering cannot be saved by a resort to the "pathology of democracy," political gerrymandering. The Court should uphold the legacy of truth in Justice Harlan's dissent and the moral

equality which forms the basis for the American political tradition by affirming the decision of the District Court for the Southern District of Texas.

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Respectfully submitted,

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